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Ukraine's Thorny Path to the EU

From "Integration without
Membership" to "Integration
through War"

Edited by
Maryna Rabinovych
Anne Pintsch

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Editors

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We admire the resistance of Ukraine, Ukrainians, and Ukrainian academics to Russia’s unprovoked and unjustified war of aggression against Ukraine and their efforts on Ukraine’s path to membership in the European Union.

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EU-Ukraine Association Agreement, War, and The Accession Process



Ukraine’s Thorny Path to the EU—From “Integration without Membership” to “Integration through War”

Maryna Rabinovych and Anne Pintsch

1 BACKGROUND AND RATIONALE

The objective of the edited volume *Ukraine’s Thorny Path to the EU—From “Integration without Membership” to “Integration through War”* is to take stock and study the dynamics of Ukraine’s path towards EU membership. It spans two decades of Ukraine’s path towards the EU starting with the launch of the European Neighbourhood Policy (ENP) in 2004. However, the focus is on the accelerated developments after 24 February 2022, when Russia started its full-scale invasion of Ukraine. The volume addresses multiple topical questions pertaining to Ukraine’s prospective EU accession: What has been the role of Russia’s war against Ukraine in reinvigorating the EU bordering and enlargement process? How relevant is the EU-Ukraine Association Agreement (AA) in the accession context? What enables Ukraine to continue internal reforms

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amidst the war? How successful are these reforms, and have they managed to bring Ukraine closer to the EU? And finally, why is the war still an “elephant in the room”, when it comes to Ukraine’s EU accession?

The idea of the volume stems from the co-editors’ joint work on the Research Council of Norway-funded project “Lowering the Bar? Compliance Negotiations and the EU-Ukraine Association Agreement”. This project was conceived in 2020 as a specific and detailed contribution to the subfield of international compliance negotiations aimed to find out how the EU and Ukraine jointly address challenges concerned with Ukraine’s implementation of its far-reaching obligations under the EU-Ukraine AA in various policy domains. The project started in summer 2021, and the first fieldwork trip to Kyiv was planned for mid-February 2022. It never became a reality, as European carriers cancelled their flights to Ukraine amidst multiple warnings about a Russian invasion to come, and the Norwegian government issued a travel advice, warning against all trips to Ukraine. The war, Ukraine’s determined resistance and its shift to the enlargement track with the EU caused multiple changes to the project, as it broadened its focus to trace the historic developments in the EU-Ukraine relations amidst the war.

Ukraine’s formal EU membership application was submitted on 28 February 2024, the day four of Russia’s full-scale invasion of Ukraine. On the same day, Russia was conducting its multi-direction offensive against Kyiv, Kharkiv, and multiple other cities and towns and proceeded with the siege of Mariupol. As the renowned Ukrainian EU Law scholar Roman Petrov puts it, “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” (2023, p. 1058). Not the formal bid itself but Ukraine’s and the Ukrainians’ determination to resist the invasion and strive for EU membership contributed to the EU’s decision to reinvigorate the EU’s enlargement policy as a part of its response to the Russian invasion. At the same time, representing a “fundamental rupture in Europe’s post-Cold War security environment”, Russia’s invasion itself made the Member States fundamentally revisit their security preferences and calculus over the costs and benefits of further EU enlargement (Bosse, 2022, p. 540).

The EU’s planned new Eastern enlargement, as it started to be called after Moldova and Georgia also submitted membership applications immediately following the one from Ukraine, thus has many faces. It is undoubtedly geopolitical, as Russia’s invasion prompted the EU to emphasise its geopolitical actorness, including the definition and defence

of the EU's future borders (Raik et al., 2024). Moreover, if compared to the EU's reaction to the Yugoslav Wars, the EU's reinvigorated enlargement policy can be seen as a *stabilisation* and a *security-building* mechanism, yet not necessarily guaranteeing membership to target countries (Anghel & Džankić, 2023). Especially in the case of Ukraine, the new enlargement is also a sign of the EU's solidarity with the country and its citizens, as Russia's invasion violates EU values and multiple international and EU norms (Bosse, 2022). Finally, beyond the (geo)political realm, the shift to the enlargement track in the EU's relations with Ukraine, Moldova, and Georgia can be seen as the recognition of progress these countries have achieved under their Association Agreements (AAs) with the EU. Concluded in 2014, the EU's AAs with Ukraine, Moldova, and Georgia provide for these countries' far-reaching political and economic integration with the EU and require them to harmonise their domestic law with the EU's *acquis communautaire* in multiple areas. As the AAs, nonetheless, do not include a membership perspective for signatory countries, these agreements are referred to in the literature as offering "integration without membership" (Petrov et al., 2015; Van der Loo, 2016). As the AAs remain the key legal framework for the EU's relations with Ukraine, Moldova, and Georgia, the EU's new Eastern enlargement represents a continuation of the association process, yet with a new level of political expectations.

Unique geopolitical and security features of the new Eastern enlargement prompted the Commission to be quick in assessing Ukraine's, Moldova's, and Georgia's EU membership applications, as required by Article 49 of the Treaty on the European Union (TEU) (European Union, 2012). Already in June 2022, the Commission published its Opinions on all three applications. It recommended granting Ukraine and Moldova EU candidate country status "on the understanding" that the two countries would conduct reforms in the rule of law domain and comply with other EU standards, as specified in the Commission's Opinions on their membership applications (European Commission, 2022a, 2022b). Given the domestic political situation in Georgia, the Commission recommended to acknowledge Georgia's European perspective but make the granting of candidacy to it conditional on its reform progress. On 23 June 2022, the Commission's recommendations were endorsed by the European Council, and Ukraine and Moldova officially became EU candidate countries, and Georgia joined the group of potential candidates. Following the Commission's review of the three countries' progress

towards designated reform steps, the European Council endorsed the opening of accession negotiations with Ukraine and Moldova and the granting of EU candidacy to Georgia (European Council, 2023a). The next step in the process for Ukraine and Moldova will be the agreement on the negotiating frameworks, the first drafts of which were presented by the Commission in March 2024. The negotiating frameworks establish principles governing the accession negotiations, their substance, and the negotiation procedure with the objective that Ukraine and Moldova fully adopt the EU *acquis* and ensure its implementation and enforcement.

Thus, following years of “integration without membership”, Ukraine and Moldova have completed four of the nine steps of the accession process within two years, and it may be expected that their negotiating frameworks will be soon agreed on by the Member States (see Table 1). Georgia still needs to take designated reform steps for opening accession negotiations, i.e. to reach step 4. It is, however, overly optimistic to think that the accession process will sustain the same speed. The Commission starts negotiations with new candidate countries as to their compliance with thirty-three chapters of the *acquis communautaire*, ranging from the free movement of goods and services to judiciary and fundamental rights and foreign, security, and defence policy matters. Here it is worth echoing the Enlargement Commissioner Olivér Várhelyi’s answer to the question regarding the possibility of a new ambitious enlargement by 2030: “I do not think it is a question of dates. It is a question of [political] will and a question of delivery. Delivery on the part of the EU, but also delivery on the part of our partner countries...” (Brzozowski, 2023, p.1).

Political will is essential to address multiple outstanding challenges and uncertainties faced by the new wave of enlargement. First, as the President of the European Council Charles Michel underlined in his speech on enlargement at the 2023 Bled Strategic Forum, the EU’s ambition is to integrate two groups of countries by 2030: new candidate countries in the East and in the Western Balkans (European Council, 2023b). The latter group of countries has been in the accession process for a while, yet prior to 2022 this process was stagnating both due to the lack of the EU’s own commitment to the region and domestic lack of leadership, de-democratisation, and state capture issues (Bechev, 2022). Ensuring the accession of new countries from two regions will thus require the EU to strengthen its own “capacity to absorb new members” and make EU institutions “enlargement-ready” (European Council, 2023b, p.1; Franco-German Working Group on the EU Institutional Reform, 2023,

Table 1 Key steps in the accession process. *Source:* European Commission, 2022c

Step 1	Country submits its application for EU membership to the Council of the EU
Step 2	The European Commission submits its Opinion on the membership application
Step 3	EU Member States take a unanimous decision to grant the applicant country candidate status. It may define conditions the country needs to fulfil before accession negotiations can be opened
Step 4	After conditions are met, EU Member States unanimously decide to open the accession negotiations
Step 5	The Commission proposes a draft negotiating framework. The accession process starts as all Member States agree on the framework
Step 6	Accession negotiations are conducted within six thematic clusters as defined by the 2020 revised accession methodology, namely fundamentals, internal market, competitiveness and inclusive growth, green agenda and sustainable connectivity, resources, agriculture and cohesion, and external relations
Step 7	Once negotiations are finalised, the Commission provides its Opinion as to the country's readiness to join the EU
Step 8	Based on this Opinion, EU Member States take a unanimous decision to close the process. The European Parliament should give its consent
Step 9	All EU Member States and the candidate country sign and ratify an accession treaty

p.1). An important suggestion, in this vein, is to broaden the use of the qualified majority voting (QMV) procedure in the enlargement process, so that the unanimous agreement of the Member States is not required to close each negotiating chapter with each partner country (Franco-German Working Group on the EU Institutional Reform, 2023, pp. 23–26). Furthermore, to increase pre-accession funds, available to candidate countries, and cover the costs of accession, the EU needs to reconsider its budget rules and regulations (Stanicek & Przetacznik, 2023, p. 6). In the event of the accession of Ukraine with its large agricultural lands, the EU will also have to reform the distribution of agricultural funds under its Common Agricultural Policy (CAP). This issue will definitely be contentious, as the Polish farmers' protests against Ukraine's agricultural exports already show (Stanicek & Przetacznik, 2023, p. 7).

Political will on the EU's side will not, however, be enough if partner countries do not move forward with reforms and demonstrate progress towards reforms and aligning their legislation with the EU *acquis*. The alignment challenge is of importance for Ukraine, Moldova, and Georgia,

since neither the AAs with these countries cover the whole scope of the EU *acquis*, nor did the countries manage to implement all the AA-based commitments (for Ukraine's progress, see Cabinet of Ministers of Ukraine, 2024). As the ambition of the accession process is much higher than in the association context, partner countries are expected to have much less political room for compliance negotiations with the EU (Rabinovych & Pintsch, 2023, p. 268). In other words, the Commission is expected to be much stricter when assessing new candidate states' compliance with EU rules, compared to the association relations context, and emphasise their implementation and enforcement of the *acquis*. For Ukraine, the human, economic, and infrastructural costs of Russia's aggression make the alignment process particularly difficult. On the other hand, however, the Ukrainian population demonstrates the highest-ever support for the country's European integration, and its civil society works proactively to monitor and facilitate the accession process (e.g. Schminke, 2023; Promote Ukraine, 2023). An important role in keeping Ukraine on track and offering it opportunities for reconstruction also belongs to multiple technical and financial instruments the EU uses to support it amidst Russia's aggression, such as the recently adopted 50 bln EUR-worth Ukraine Facility to operate between 2024 and 2027 (European Parliament & Council, 2024). Notably, the Ukraine Facility and earlier EU political documents and statements have established a firm connection between the processes of Ukraine's EU accession and post-war reconstruction and recovery (e.g. European Commission, 2022d). Estimated by the World Bank (2024) to cost USD 486 billion over the next decade, Ukraine's post-war reconstruction will be highly demanding and requires a thorough rethinking of Ukraine's economic profile and its role in the EU economy.

Given these unique complexities, the edited volume focuses on the single case of Ukraine as a prospective geopolitical enlargement country. Bringing together Ukrainian and European political science and legal scholars, it offers a nuanced analysis of where Ukraine stands in terms of the accession process and necessary reforms in various sectors. In doing so, it looks at Ukraine's EU integration process as a continuum since the EU reinforced cooperation with Eastern Neighbours following its "Big Bang" enlargement in 2004. This joint endeavour has three distinctive features. Firstly, it goes beyond a general stocktaking exercise and considers sector dynamics in Ukraine. Its "sectoral" contributions pay particular attention to the multifaceted direct and indirect consequences

of Russia's aggression and Ukraine's resistance to it have had for various sectors and reform areas, *inter alia*, the rule of law, trade, environment, and education. In this vein, it also discusses the needs and challenges of post-war reconstruction within the sectors under study. Secondly, the volume emphasises perspectives from Ukraine and Ukrainian authors—i.e. those who are often underrepresented in the dominant Euro-centric literature on EU enlargement. Giving a word to Ukrainian colleagues—based both in Ukraine and abroad—has been crucial for the book, given their local knowledge and its importance for Ukraine's ownership of the accession progress. And, finally, the work seeks to be critical and highlights the challenges Ukraine faces and will potentially face in the context of the accession process and its relations with the EU, more broadly. Though the EU and Ukraine should seize the current momentum for Ukraine's EU accession, the continuing war, the devastation it brings about, and new societal cleavages will keep Ukraine's path to the EU thorny.

2 KEY THEMES

The edited volume is divided into two parts. Part 1 offers general insights into Ukraine's European integration process and the changes it has undergone following the Russia's invasion. In turn, Part 2 is dedicated to the dynamics and challenges in specific sectors and reform areas in the context of Ukraine's accession process.

2.1 *Part 1—EU-Ukraine Association Agreement, War, and the Accession Process*

To start, *Christian Freudlsperger* and *Frank Schimmelfennig* adopt a “bordering” perspective to investigate how the European integration project has developed in reaction to Russia's war against Ukraine. In their understanding, “bordering” encompasses “all activities of boundary making and management” (p.21). Boundaries are, in turn, defined as rules that regulate the movement of persons and products between territorial entities and, dependent on their function, can be political, economic, cultural, or military. Since the 1970s, scholars have been conceptualising the evolution of political organisations from the perspective of boundary formation, emphasising the link between the increasing closure and control of external borders, and internal institutional developments and democratisation (e.g. Rokkan, 1974; with a focus on the EU: Bartolini, 2005,

Schimmelfennig, 2021). Based on this theoretical lens, Freudlsperger and Schimmelfennig examine the extent and dynamic of boundary closure and control between the EU and Ukraine over the period from 2013 to the first half of 2023 in the aforementioned functional domains. They showcase that EU-Ukrainian borders have gradually opened up after Russia's 2014 attack. In turn, a remarkable decline in border control and closure between the EU and Ukraine following the 2022 full-scale invasion signifies Ukraine's European "integration through war".

Similar to the first chapter, *Rilka Dragneva* and *Kataryna Wolczuk* zoom in on the dynamics of the EU-Ukraine relations, preceding the 2022 Russia's full-scale invasion. Their contribution is two-fold. First, it focuses on the role of the EU-Ukraine AA as a framework of Ukraine's pre-invasion "integration without membership" with the EU, going back as far as the AA negotiations in 2007–2008. Next, it unpacks a raft of additional measures the EU adopted to make this framework fit the challenges of Ukraine's resistance to Russia's invasion, its new EU candidacy status, and post-war reconstruction. In both realms, they apply a developmental lens that enables them to see the AA as a framework for Ukraine's EU integration and its overarching modernisation. Dragneva and Wolczuk demonstrate that, prior to 2022, both the lack of a political finalité and Ukraine's capacity to implement its far-reaching obligations under the AA negatively influenced the AA's role as a modernisation framework. They point out that, while the AA acquired new significance and relevance in the accession and reconstruction contexts, it is of high importance to address Ukraine's capacity constraints. With regard to reconstruction, the authors also stress the challenges of ensuring donor coordination and putting the principles of ownership, transparency, and accountability into practice.

Peter Van Elsuwege agrees with Dragneva and Wolczuk as to the relevance of the EU-Ukraine AA in the accession context. Stressing that "the reorientation of an association agreement from an alternative to membership into a pre-accession instrument is not new" (p. 85), he compares the EU-Ukraine AA with Europe Agreements with Central and East European (CEE) countries to substantiate this point. Nonetheless, the results of this comparative endeavour show that "whereas the EU-Ukraine AA provides a comprehensive framework for the development of EU-Ukraine relations, it does not exhaustively cover all remaining challenges on the road towards EU membership" (p. 76). Developing this point, Van Elsuwege uses the cases of trade liberalisation, movement of persons, and

the protection of minorities to illustrate the potential of the EU-Ukraine AA to serve as a point of reference in the areas the Agreement does not exhaustively deal with.

The movement of persons will undoubtedly be a big topic in EU-Ukraine accession negotiations, as over four million Ukrainians and third-country citizens, permanently residing in Ukraine before the invasion benefit from temporary protection in the EU (as of January 2024; Eurostat, 2024). As argued by Freudlsperger and Schimmelfennig, the Council's decision to enact the Temporary Protection Directive (TPD) in response to Russia's invasion of Ukraine signified an important instance of boundary opening between the EU and Ukraine (Council of the EU, 2001, 2022). *Valeria Lazarenko* and *Maryna Rabinovych* address this topic in more detail, applying the multi-level governance perspective to explain varying practices of the TPD's implementation across EU Member States based on the cases of Germany, Poland, Czech Republic, and Sweden. They show how the variation in TPD implementation practices results in various degrees of Ukrainians' job market and social integration in Member States and influences their personal choices and life trajectories. Consequently, both the EU and Ukraine should consider national approaches to TPD implementation in their policies vis-a-vis Ukrainians in the EU. Making such policies is an extreme challenge, as the war continues, the Ukrainian government seeks to reintegrate as many citizens as possible to contribute to resistance and post-war reconstruction, and the EU and Ukraine anyhow need to agree on free movement of persons in the accession context.

Also focusing on the EU and Ukrainians, *Kostiantyn Fedorenko* discusses the risks of Eurosceptic attitudes in Ukraine after Russia's war against Ukraine ends. He complements an insight into public opinion polls on Ukrainians' attitudes to the EU by looking at the comment sections of the most popular Ukrainian media on Facebook and YouTube. The work by Fedorenko classifies Eurosceptic claims into various categories, with those of insufficient Western military assistance and Ukraine's moral superiority as compared to the West amplified by the Ukrainian government. The extent to which scepticism towards the West and towards the EU, specifically, will be prevalent in Ukraine following the war will largely depend on the war's finalité, as well as the EU's and Ukraine's accession negotiations' progress. Coupled with war-related losses and trauma, frustration with the lengthy and cumbersome accession process may cause de-democratisation and reform backsliding in Ukraine

similar to the way this had been happening in the Western Balkans (e.g. Vachudova, 2019; Bechev, 2022).

2.2 *Part 2—Sectoral Dynamics and Challenges of Ukraine’s Integration Process*

The contribution by *Karina Shyrokykh, Kateryna Busol, and Dmytro Koval*, opening up the sectoral part of the book, looks at the relationship between the reform and European integration processes in Ukraine. The key question they ask includes three aspects: “To which extent, how and why does the EU integration accelerate reforms in Ukraine amidst the war” (p. 154). To answer this three-fold question, their work builds on the compliance literature and case studies of Ukraine’s wartime reforms in the areas of justice, anti-corruption, and gender equality. It is shown that the war has exerted a strong influence on cost–benefit calculations of domestic elites, especially in political and even ideologically sensitive domains, such as gender equality. At the same time, it is shown that the granting of EU candidacy to Ukraine has contributed to the EU’s leverage in Ukraine and stimulated the Ukrainian government to conduct reforms, even amidst the war. The war and Ukraine’s shift from the “integration without membership” to the accession track in its relations with the EU can be thus seen as offering momentum for pro-EU political reforms in Ukraine.

At the same time, *Yelyzaveta Alekseyeva and Anne Pintsch* point to challenges martial law has created for transparency and public participation in Ukraine, using the case of Environmental Impact Assessment. Before the war, Ukraine has reached an unprecedented level of transparency in the areas of access to public data, generally, and environmental data, specifically, even by comparison with EU Member States. Such access facilitated environmental democracy and decision-makers’ accountability in the areas of environmental protection and resource use and brought Ukraine closer to EU standards. The introduction of martial law resulted in considerable restrictions on such rights for reasons of national security and defence, as well as the protection of citizens’ personal data and personal safety. Alekseyeva and Pintsch use the literature on democratic rights during war or states of emergency and apply the proportionality test, as typically used by the European Court of Justice, to assess such restrictions and discuss their compatibility with the requirements of the accession process and Ukraine’s reconstruction.

The chapter by *Natalia Haletska* offers an insight into changes in the bilateral trade relations between the EU and Ukraine since the start of Russia's full-scale invasion in 2022. In line with the finding on the opening of the EU-Ukraine boundary for economic objects by Freudlsperger and Schimmelfennig, Haletska showcases that the war has led to the deepening of trade liberalisation between the EU and Ukraine. Yet, she points out that trade liberalisation measures, introduced by the EU in favour of Ukraine, are of a temporary nature and come with many caveats. An additional challenge is constituted by the politicisation of Ukraine's grain exports, as clearly demonstrated by Polish farmers' protests at the Polish-Ukrainian border. The introduction of unilateral restrictive trade measures against Ukrainian goods by individual Member States, as well as these protests, are symptomatic of the need for a dialogue between the Commission and EU Member States as to agricultural trade—an issue of high relevance in the accession context (Stanicek & Przetacznik, 2023, p. 7).

Already prior to the full-scale invasion, EU-Ukraine trade liberalisation and the related approximation of laws went far beyond trade in goods to encompass trade in services, public procurement, competition and state aid, and, not least, intellectual property (IP) rights—all these areas are regulated by the Deep and Comprehensive Free Trade Agreement (DCFTA) as part of the AA (Rabinovych, 2024). In this vein, *Oprysk* explores the wartime dynamics of Ukraine's legislative approximation with the EU, using the case of the 2022 Ukraine's Copyright Act. The contribution considers this Act in the context of both the legacy of Ukraine's copyright history, which was especially challenging during the Soviet times, and rapidly developing EU copyright law as a “moving target for approximation” (p. 204). It finds that the adoption of the new Copyright Act signifies both “a major step towards compliance with the EU *acquis*” (p. 219) and copyright recovery from the Soviet legacy. It is also illustrative of the Ukrainian government's zeal to improve the protection of fundamental rights and private property, not least with a view to the reconstruction process, and ensure the rule of law amidst Russia's full-scale invasion.

Just like IP rights, environmental protection plays an important role both in the AA/DCFTA context and with respect to Ukraine's EU accession process. Moreover, EU relations with third countries in the environmental realm are increasingly influenced by the European Green Deal—a set of policy initiatives and legal acts the EU adopted in 2020 to

make the Union climate-neutral by 2050. In this vein, *Karina Shyrokykh* and *Olga Melen-Zabramna* explore and explain Ukraine’s reforms in the domain of environment and climate. The guiding question they ask is: “What drives Europeanisation of Ukraine’s environmental and climate policy and why?” (p. 249). To answer it, they employ the notions of “anticipatory compliance” and “instrumental compliance” to the whole spectrum of policy and legislative changes Ukraine has introduced in the environmental protection and climate domains since 2014. Their analysis covers numerous aspects, such as waste management, air quality, industrial pollution, risk management, the use of chemicals, and climate issues. Overall, in line with the concept of anticipatory compliance, Shyrokykh and Melen-Zabramna stress Ukraine’s strong alignment with the norms of the European Green Deal, despite its patchy record of compliance with AA norms.

The work by *Halyna Protsyk* contributes to the volume by unpacking a complex interplay between war, resilience, and European integration in the higher education sector. In doing so, it dedicates particular attention to the implications of the wartime dynamics in Ukraine’s higher education sector for its potential EU accession and further integration into the European Education Area (EEA). The contribution is informed by a detailed analysis of documents and secondary sources, several semi-structured interviews, and the author’s first-hand experience as deputy vice rector for outreach and social engagement (internationalisation) at the Ukrainian Catholic University in Lviv.

Finally, the volume’s co-editors *Anne Pintsch* and *Maryna Rabinovych* summarise the findings and reflections as to where Ukraine currently stands on its thorny path to EU accession and how both the EU and Ukraine can contribute to helping Ukraine complete this path quickly and effectively. They do so by offering policy recommendations both to EU institutions and Member States, and the Ukrainian government.

REFERENCES

- Anghel, V., & Džankić, J. (2023). Wartime EU: Consequences of the Russia-Ukraine war on the enlargement process. *Journal of European Integration*, 45(3), 487–501. <https://doi.org/10.1080/07036337.2023.2190106>
- Bartolini, S. (2005). *Restructuring Europe: Centre formation, system building and political structuring between the nation-state and the European Union*. Oxford University Press. <https://doi.org/10.1093/0199286434.001.0001>

- Bechev, D. (2022). What has stopped EU enlargement in the Western Balkans? *Carnegie Europe*. <https://carnegieendowment.org/research/2022/06/what-has-stopped-eu-enlargement-in-the-western-balkans?lang=en¢er=europe>
- Bosse, G. (2022). Values, rights, and changing interests: The EU's response to the war against Ukraine and the responsibility to protect Europeans. *Contemporary Security Policy*, 43(3), 531–546. <https://doi.org/10.1080/13523260.2022.2099713>
- Brzozowski, A. (2023). EU readies 'substantial proposals' on enlargement in October, Várhelyi says. *EURACTIV*. <https://www.euractiv.com/section/enlargement-neighbourhood/interview/eu-readies-substantial-proposals-on-enlargement-in-october-varhelyi-says/>
- Cabinet of Ministers of Ukraine (2024). *Agreement Pulse. Monitoring of the implementation plan of the Agreement*. <https://pulse.kmu.gov.ua/en>
- Council of the EU (2022). Implementing Decision (EU) 2022/382 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection. *Official Journal of the European Union L* 71/1.
- Council of the EU. (2001). Directive 2001/55/EC on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof. *Official Journal of the European Union L*, 212, 12–23.
- European Union (2012). Consolidated version of the Treaty on European Union. *Official Journal of the European Union C* 326/13. https://eur-lex.europa.eu/resource.html?uri=cellar:2bfl40bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF
- European Commission (2022a). Opinion on Ukraine's application for membership of the European Union. COM (2022) 407 final.
- European Commission (2022b). Opinion on the Republic of Moldova's application for membership of the European Union. COM (2022) 406 final.
- European Commission (2022c). EU accession process step-by-step. Retrieved 25 May 2024 from https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/eu_accession_process_clusters%20%28oct%202022%29.pdf
- European Commission (2022d). Ukraine's relief and reconstruction. COM (2022) 233 final.

- European Council (2023a). European Council conclusions on Ukraine, enlargement and reforms. <https://www.consilium.europa.eu/en/press/press-releases/2023/12/14/european-council-conclusions-on-ukraine-enlargement-and-reforms/>
- European Council (2023b). Speech by President Charles Michel at the Bled Strategic Forum. <https://www.consilium.europa.eu/en/press/press-releases/2023/08/28/speech-by-president-charles-michel-at-the-bled-strategic-forum/>
- European Parliament and Council (2024). Regulation (EU) 2024/792 establishing the Ukraine Facility. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32024R0792>
- Eurostat (2024). *Temporary protection for persons fleeing Ukraine – monthly statistics*. Retrieved 25 May 2024 from https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Temporary_protection_for_persons_fleeing_Ukraine_-_monthly_statistics
- Franco-German Working Group on the EU Institutional Reform (2023). *Sailing on high seas: Reforming and enlarging the EU for the 21st century*. Retrieved 25 May 2024 from <https://www.politico.eu/wp-content/uploads/2023/09/19/Paper-EU-reform.pdf>
- Freudlsperger, C. & Schimmelfennig, F. (2025). War and boundary formation: The Russo-Ukrainian war and European integration. In M. Rabinovych & A. Pintsch (Eds.) *Ukraine’s thorny path to the EU: From “integration without membership” to “integration through war”*. Palgrave Macmillan.
- Oprysk, L. (2025). Harmonisation with the EU *acquis* amid the resistance to Russian aggression as a catalyst of Ukrainian copyright recovery. In M. Rabinovych & A. Pintsch (Eds.) *Ukraine’s thorny path to the EU: From “integration without membership” to “integration through war”*. Palgrave Macmillan.
- Petrov, R. (2023). Bumpy road of Ukraine toward the EU membership in time of war: “accession through war” *v* “gradual accession.” *European Papers*, 8(3), 1057–1065. <https://doi.org/10.15166/2499-8249/701>
- Petrov, R., Van Elsuwege, P., & Van der Loo, G. (2015). The EU-Ukraine Association Agreement: A new legal instrument of integration without membership? *Kyiv-Mohyla Law and Politics Journal*, 1(1), 1–19. <https://doi.org/10.18523/kmlpj52678.2015-1.1-19>
- Promote Ukraine (2023). Manifesto of Ukrainian civil society organizations: Actions agenda in support of Ukraine for the European elections 2024. <https://www.promoteukraine.org/manifesto-of-ukrainian-civil-society-organisationsactions-agenda-in-support-of-ukraine-for-the-european-elections-2024/>
- Rabinovych, M. (2024). EU-Ukraine “deep” trade agenda: The effectiveness and impact perspectives. *International Politics*, 61(6), 1078–1096. <https://doi.org/10.1057/s41311-022-00384-x>

- Rabinovych, M., & Pintsch, A. (2023). Compliance negotiations in EU external relations: The case of the EU-Ukraine Association Agreement. *Journal of European Integration*, 46(2), 257–277.
- Raik, K., Blockmans, S., Osypchuk, A., & Suslov, A. (2024). EU Policy towards Ukraine: Entering geopolitical competition over European order. *The International Spectator*, 59(1), 39–58. <https://doi.org/10.1080/03932729.2023.2296576>
- Rokkan, S. (1974). Entries, voices, exits: Towards a possible generalisation of the Hirschman model. *Social Science Information*, 13(1), 39–53. <https://doi.org/10.1177/053901847401300103>
- Schimmelfennig, F. (2021). Rebordering Europe: External boundaries and integration in the European Union. *Journal of European Public Policy*, 28(3), 311–330. <https://doi.org/10.1080/13501763.2021.1881589>
- Schminke, T.G. (2023). Ukraine: 92% want EU membership by 2030. *Euractiv*. <https://www.euractiv.com/section/politics/news/ukraine-92-want-eu-membership-by-2030/>
- Shyrokykh, K., and O. Melen-Zabramna (2025). Europeanisation of Ukraine's policy on environment and climate: Instrumental and anticipatory compliance. In M. Rabinovych & A. Pintsch (Eds.) *Ukraine's thorny path to the EU: From "integration without membership" to "integration through war"*. Palgrave Macmillan.
- Shyrokykh, K., Busol, K., & Koval, D. (2025). European integration and reforms in Ukraine amidst the war. In M. Rabinovych & A. Pintsch (Eds.) *Ukraine's thorny path to the EU: From "integration without membership" to "integration through war"*. Palgrave Macmillan.
- Stanicek, B. and J. Przetacznik (2023). Enlargement policy: Reforms and challenges ahead. European Parliament Research Service. Retrieved 25 May 2024 from [https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/757575/EPRS_BRI\(2023\)757575_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/757575/EPRS_BRI(2023)757575_EN.pdf)
- The World Bank (2024). Updated Ukraine's recovery and reconstruction needs assessment released. <https://www.worldbank.org/en/news/press-release/2024/02/15/updated-ukraine-recovery-and-reconstruction-needs-assessment-released>
- Vachudova, M. (2019). EU enlargement and state capture in the Western Balkans. In J. Džankić, S. Keil, & M. Kmezić (Eds.), *The Europeanisation of Western Balkans. A failure of EU conditionality?* (pp. 63–85). London: Palgrave Macmillan.
- Van der Loo, G. (2016). *The EU-Ukraine Deep Association Agreement and Deep and Comprehensive Free Trade Area. A new legal instrument for EU integration without membership*. BRILL. ISBN: 978 90–04–29864–4

Van Elsuwege, P. (2025). Revisiting the EU-Ukraine Association Agreement: A crucial instrument on the road to membership. In M. Rabinovych & A. Pintsch (Eds.), *Ukraine's thorny path to the EU: From "integration without membership" to "integration through war."* London: Palgrave Macmillan.

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War and Boundary Formation: The Russo-Ukrainian War and European Integration

Christian Freudlsperger and Frank Schimmelfennig

1 INTRODUCTION

The Russo-Ukrainian war presents the European Union (EU) with a fundamental and novel challenge. Although it is not a direct military attack on the EU or its member states, Russia aims to radically change the post-Cold War European order and to stop, and possibly roll back militarily, the expansion of Western regional integration in Eastern Europe. Moreover, the Russian aggression challenges the EU to reconsider its relationship with the Eastern European countries directly threatened by Russian imperialist revisionism and to develop the capacity to respond to military aggression. Generally, the Russo-Ukrainian war raises the question of whether and how existential military threats can serve as drivers of European integration.

“Integration through war” brings us back to time-honoured debates in the study of state formation. “Bellicist” theories of political development

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(Hintze, 1994; Riker, 1964, 1987; Tilly, 1975, 1990; Weber, 1978) have long claimed that the exigencies of warfare have been the decisive factor in the emergence and prevalence of the modern state. Moreover, in the bellicist perspective, war has been the major instrument for the territorial expansion and consolidation of the modern state. Daniel Kelemen and Kathleen McNamara recently attributed the “incomplete, uneven, and dysfunctional development” of the EU (Kelemen & McNamara, 2022, p. 965) to the fact that it was formed in a gradual process of market-making rather than the “crucible of war”. In their view, the Russian invasion of Ukraine holds the potential to remake the EU (McNamara & Kelemen, 2022). Yet the bellicist expectation of EU-level centralisation and administrative, financial, and coercive capacity building in response to the Ukraine crisis may be based on a misconstrued historical analogy and a flawed understanding of the drivers of EU political development (Eilstrup-Sangiovanni, 2022; Freudlsperger & Schimmelfennig, 2022; Genschel, 2022).

We approach the effects of the Russo-Ukrainian war on EU political development from a “bordering” perspective. Following the seminal work of Stein Rokkan (1974) and Stefano Bartolini (2005) on the linkage between boundary formation and political development in modern state building and European integration, we conceive of boundaries as functionally differentiated institutions that regulate the movement of persons and products across territorial systems. In a bordering perspective, changes in the closure and control of the internal and external boundaries of a polity are important markers of polity formation. Polity formation has two major dimensions that correspond to boundary closure and control. Boundary closure corresponds to “community building” (or “nation building”), facilitating communication and transactions among insiders, while at the same time demarcating the community from outsiders. By contrast, the centralisation of boundary control is equivalent to “capacity building” (or “state building” in the state formation literature), the concentration of authority and resources in the polity centre.

Specifically, we understand the Russo-Ukrainian war as a boundary shock that challenges the capacity and community of the EU polity. Such boundary shocks typically trigger processes of “external rebordering” consisting in a more rigid demarcation and stronger control of the polity’s external boundaries. They tend to further community building through the inclusion of (prospective) community members and the exclusion of

the detractors of the community and to promote capacity building by way of centralising competences and resources of border protection.

Empirically, we use a novel dataset of EU boundary configurations to describe the development of the EU boundaries with Ukraine between 2013 and 2023 in comparison with the EU's internal boundaries. In line with our expectations, we find that the Russian war on Ukraine has generated a process of boundary opening that started slowly in 2014, accelerated considerably in 2022, and was accompanied by increasing EU-Ukraine transactions. At the same time, we observe only slight changes in both the internal boundary configurations of the EU and the control of its external boundaries in response to the war. The Ukraine crisis did not trigger a centralisation of EU decision-making, nor has it caused a massive build-up of novel administrative, financial, or coercive capacities at the EU level as of yet. "Integration through war" has thus been uneven. Whereas it advanced EU community building through the gradual inclusion of Ukraine, it has not led to significant capacity building, at least in the initial phase of the war. Weak capacity building, we argue, is a function of the regulatory nature of EU polity formation (Majone, 1996), in which the executive control of boundaries has remained largely with the member states and collective defence has been organised in NATO rather than the EU.

2 BORDERING, POLITY FORMATION, AND THE UKRAINE CRISIS

2.1 *Political Development as Boundary Formation*

"Bordering" encompasses all activities of boundary making and management. We define boundaries as both territorial and functional institutions. Boundaries consist of rules that regulate the movement (entries and exits) of persons and products between territorial organisations. As functional institutions, they differ by the type of transactions they regulate. Conventionally, the literature distinguishes economic, cultural, political, and military boundaries in line with the respective functional subsystems of territorial social systems (Bartolini, 2005, pp. 13–20; Rokkan, 1974, p. 42).

The institutional configuration of each boundary consists in a combination of closure and control. Closure determines to what extent the rules restrict exits and entries. Open borders allow for unrestricted movement;

closed borders prohibit exit or entry. Control refers to the legal competence and the resource-dependent capacity to make, implement, and enforce these rules. Finally, boundary congruence refers to the overlap of functional boundaries. Congruence is high if different functional boundaries delimit the same territories and if they are equally closed and controlled. In sum, the “boundary configuration consists in the constellation of closure, control, and congruence across the economic, cultural, political, and military boundaries” of a territorial system (Bartolini, 2005, pp. 15–16; Schimmelfennig, 2021, pp. 315–316).

Stein Rokkan and Stefano Bartolini pioneered the analysis of political development as boundary formation. Rokkan started from the assumption that the bordering affects “the configurations of political resources inside each territory” (Rokkan, 1974, p. 43). In his account, the relative difficulty of bordering shaped the diverse trajectories, timing, and forms of state building in Europe. Following Albert Hirschman’s (Hirschman, 1970, 1978) argument that dissatisfied individuals turn to “voice” when “exit” opportunities decrease, Rokkan theorised a systematic effect of the increasing closure and control of external territorial boundaries on the internal development of representative institutions and democratisation (Rokkan, 1974, pp. 49–53).

Bartolini (2005) elaborated Rokkan’s seminal work and extended it to European integration as a new phase in Europe’s political development. In his analysis, controlling the external boundaries of territory and locking in actors and resources strengthens in-group identities and behavioural conformity. It reduces the options of societal actors to withdraw from territorial public policies, increases pressures for territorial social cooperation, and secures the resources required for effective collective action. It facilitates internal learning and trust building, and it generates demand for the legitimation of and participation in political authority (Bartolini, 2005, pp. 40–47). In sum, effective boundary control and the concomitant reduction of exit opportunities set in motion a mutually reinforcing process of political structuring (party formation and democratic representation) and political production (public goods provision).

2.2 *War and Boundary Change*

Wars can have a direct effect on boundary change. Winners shift borders by annexing territories, establishing imperial control, or creating newly

independent states. These are presumably the Russian aims in the war on Ukraine. In the broader bellicist perspective on polity formation, however, the exigencies of military threats and wars have had indirect effects, too. They led states to centralise state authority, strengthen state resources, and foster national community—triggering a change in boundary closure and control (Hintze, 1994; Riker, 1964, 1987; Tilly, 1975, 1990; Weber, 1978). Those are the potential effects of the Russo-Ukrainian war on the EU.

Military threats and wars constitute shocks to an existing boundary configuration. They potentially expose capacity deficits, e.g. regarding the polity's ability to protect and defend its borders. In response, polities strive to increase their own military capabilities, build military alliances, and establish stronger boundary control. Military threats can also expose community deficits, e.g. regarding the size and cohesion of the community or the demarcation of insiders and outsiders. In this regard, military threats and wars produce social dynamics of inclusion and exclusion (Wimmer, 2013). First, polities resort to a clearer demarcation of their boundaries with the attacker and raise the barriers to the movement of people and products. Second, internal and external differentiated integration (Schimmelfennig & Winzen, 2020), which creates fuzzy and malleable boundaries between members and non-members, gives way to pressures for a clear demarcation of insiders and outsiders, the abolishment of grey areas, and uniform integration. Third, whereas the attacker is subjected to “othering”, ostracism, and social exclusion that cuts across the board of functional boundaries and cross-border interactions, the attacked benefits from the collective identification and solidarity of the community that manifests itself in the opening of boundaries.

In addition to these general expectations, however, any explanation of the EU's boundary development in reaction to military transboundary crises needs to take into consideration the peculiar origins and nature of the EU polity as a “regulatory state” (Majone, 1996). After the failure of the European Defence Community in the mid-1950s, European integration left the path of federalist polity formation built around common military capacities. Henceforth, the common defence of the member states was organised in NATO, whereas the European Communities focused on economic integration. Supranational European institutions have played a predominantly regulatory role in making a common market. Whereas they are delegated an important legislative and judicial enforcement role to remove at-the-border and behind-the-border barriers to

the movement of persons and products and to ensure fair competition, they lack major administrative, fiscal, and coercive capacity. The administrative implementation of EU regulation, the compensation of economic losers through the welfare state, and the means of macroeconomic stabilisation remained with the member states (Majone, 1996). EU external governance also focuses on the extension of the internal market and its regulatory rules (Bradford, 2012; Lavenex & Schimmelfennig, 2009). Even when functional pressures arising from the completion of the internal market incited the EU to venture into areas of “core state powers” (Genschel & Jachtenfuchs, 2014, 2016), it upheld this emphasis on regulation over capacity building.

This developmental path has a significant impact on EU boundary formation policies—and its reaction to military crises, in particular. On the one hand, the EU focuses on the regulation of boundary closure. It legally introduces and enforces the rules that regulate the entry and exit of persons and products across its internal and external borders in a large majority of functional domains. For this purpose, it enjoys considerable legislative authority, coupled with high judicial authority, over boundaries. On the other hand, the executive control of boundaries, the implementation of EU boundary rules and their everyday application remains largely with the member states. This is also true for the administrative, financial, and coercive resources required for effective boundary control. Whereas the EU often plays a complementary role, providing technical facilities, information, and financial support, the bulk of the border control “hardware” is national.

In principle, this division of labour in boundary control is subject to change if military threats and war expose national capacity deficits. Yet because most member states organise their collective defence and the pooling of the relevant military capacity in NATO, the EU is unlikely to benefit from such capacity deficits. We, therefore, expect the EU response to the Ukraine crisis to consist predominantly in the regulatory closure and opening of boundaries rather than an increase in the supranational executive boundary control authority and capacity.

To sum up the empirical implications of our theoretical considerations, we expect to observe two major patterns in EU polity formation in response to the Russo-Ukrainian war. In the community-building dimension, the EU enacts inclusive regulatory policies *vis-à-vis* Ukraine. The Russian attack has clarified Ukraine’s belonging to the EU’s international community and its demarcation from the “Russkij Mir”. It also made the

EU's policy of keeping Ukraine in a grey zone without a commitment to potential membership untenable. Consequently, EU-Ukrainian boundaries become increasingly open and cross-border transactions increase. By contrast, in the capacity-building dimension, the existing level and scope of European integration remain largely stable.

3 DATA

To investigate how the war in Ukraine affected European integration, we collect novel data on the internal boundaries between EU member states and the Union's external boundaries vis-à-vis Ukraine. We choose 2013 as the starting point of our investigation to assess changes from the pre-crisis period over the 2014 Russian invasion to the consequences of the full-scale attack of 2022. Our unit of analysis is the country-year-dyad. This means that we gather annual data on the configuration of two territorial boundaries: between EU member states and between the EU and Ukraine. Even though there is some variation among EU member states with regard to the boundary configuration, most notably due to the differentiated integration of the Area of Freedom, Security and Justice, we treat the EU as a unitary actor. Per country dyad, we have eleven points at which we measure the boundary configuration, from 2013 to 2023. While we assess the boundary configuration at year-end for the period between 2013 and 2022, we code the values for 2023 at the end of May.

We follow the pertinent literature (Bartolini, 2005; Rokkan, 1974; Schimmelfennig, 2021) in distinguishing four functional boundaries of political systems: economic, political, cultural, and military. In a first step, to operationalise these abstract concepts, we define the objects (products) and subjects (persons) which cross each of these four boundaries and whose movements are affected by a given boundary's institutional configuration. In line with our codebook, the political boundary of a territorial unit, for instance, affects the movements of four types of subjects (residents, refugees, non-governmental political agents, government officials) and one object (personal data). The military boundary, to take another example, regulates the cross-border movements of two subject types (military personnel and police/law enforcement personnel) and two types of objects (dual-use technology and military weapons). As we equally specify boundary-crossing subjects and objects for the economic and cultural boundary, our dataset encompasses all types of objects and subjects regulated by EU law referring to Ukraine between 2013 and 2023. We thus

cover all relevant functional boundaries. All in all, our dataset comprises twelve subject types and nineteen object types. We provide a full list of the boundaries analysed in this chapter in Table 1.

In a second step, we code the level of boundary closure for each of these boundary-crossing subjects and objects, i.e. a boundary's permeability for cross-boundary movement. Per subject/object, we code the level of closure twice, once for movements from Ukraine into the EU

Table 1 List of boundaries and boundary-crossing objects and subjects

<i>Function</i>	<i>Subjects/objects</i>	<i>Boundary</i>
Economic	Subjects	Workers
		Service providers
		Entrepreneurs
	Objects	Natural gas
		Coal/oil
		Steel
		Industrial products
		Agricultural products
		Financial products
		Digital products
		Services
		Investments
		Private transfers
		Public transfers
		Air transport
		Rail transport
		Road transport
		Sea transport
		Political
Refugees		
Objects	(Non-governmental) political agents	
	Government officials	
Cultural	Subjects	Personal data
	Subjects	Students
		Tourists
Military	Objects	Family
		Audio-visual media
	Subjects	Military personnel
		Police/law enforcement personnel
	Objects	Dual-use technology
		Military weapons

(entry) and once for movements from the EU into Ukraine (exit). To this end, we construct a six-point categorical scale that ranges from fully open (0) over mostly open (1), partly open (2), partly closed (3), and mostly closed (4), to fully closed (5). We start our coding from the baseline, i.e. whether a boundary's default configuration is closure or openness and whether regulation defines exceptions from either a fully closed or a fully open boundary. We then code the intermediary levels of closure depending on the extent of exemptions to closure or openness. To this end, we operationalise the meaning of fully/mostly/partly open/closed in an issue-specific way, that is, per boundary-crossing object/subject.¹

To assess the value of closure for each dyad, we screen the relevant primary, secondary, and tertiary legislation of the EU. The cross-boundary movements of one and the same object or subject can be differently regulated depending on the boundary at hand. For instance, while the cross-border supply of steel and its derivatives is subject to internal market regulation between EU member states, it is regulated by the existing association agreement between the EU and Ukraine. We code the level of boundary closure based on the relevant regulation that applies to a given boundary-crossing subject or object at a given point in time. Note that, since we are interested in the EU reaction to the Ukraine war, we only code the EU regulation of the boundaries and do not take into account Ukrainian measures.

In a third step, we assess the degree of the EU's control over an internal or external boundary, i.e. the centralisation of boundary control authority in the EU's multilevel system. To this end, we distinguish between legislative, executive, and judicial control.

¹ To give an example, the scale comprises the following five categories for the object "financial services". Fully open boundary (0): unconditional permission of the cross-border provision of financial services; mostly open boundary (1): explicit permission of nearly all cross-border provisions with light conditions, e.g. permanent authorisation through "passporting"; partly open boundary (2): explicit permission of a majority of cross-border provisions with moderate conditions, e.g. temporary authorisation; partly closed boundary (3): explicit prohibition of a majority of cross-border provisions, permission only under exacting conditions, e.g. ad-hoc authorisation; mostly closed boundary (4): explicit prohibition of nearly all cross-border provisions, permission only under exceptional circumstances; fully closed boundary (5): explicit and unconditional prohibition of all boundary transactions.

- Legislative control: Our categorical measure of legislative control encompasses both the pooling of decision-making powers in the Council and the degree of task delegation to supranational bodies (Börzel, 2005; Leuffen et al., 2013). It ranges from an absence of EU-level policy coordination (0), over intergovernmental coordination (1), intergovernmental cooperation (2), joint decision-making under unanimity (3), joint decision-making under qualified majority (4), to supranational centralisation (5).
- Executive control: We distinguish two dimensions of executive control. The first dimension, executive competence, describes the legal authority to implement boundary legislation. It ranges from national competence (0), over intergovernmental (1) and joint competence (2), to supranational competence (3). The second dimension of executive resources describes the origin of the fiscal, administrative, and technical capacities used to implement boundary legislation. It ranges from national capacities (0), over supporting (1) and joint capacities (2), to supranational capacities (3).
- Judicial control: Lastly, we assess whether the treaties foresee the possibility of infringement procedures and preliminary references in the regulation of a given boundary. We then distinguish between national jurisdiction (0) and EU jurisdiction (1).

4 EMPIRICAL ANALYSIS

In the following, we present the results of our empirical analysis. We first turn to the impact of the Russian war against Ukraine on the dyadic boundary relations between the EU and Ukraine. In a second step, we investigate the degree of control that the EU enjoys over its external boundaries and the dynamics of the relationship between closure and control.

4.1 *Closure*

Our data shows that Russia’s aggression against Ukraine has had a sizable impact on the overall EU-Ukraine relationship. Figure 1 shows the evolution of the average closure levels across the two boundary dyads of interest. The picture that emerges corroborates our broad initial expectations.

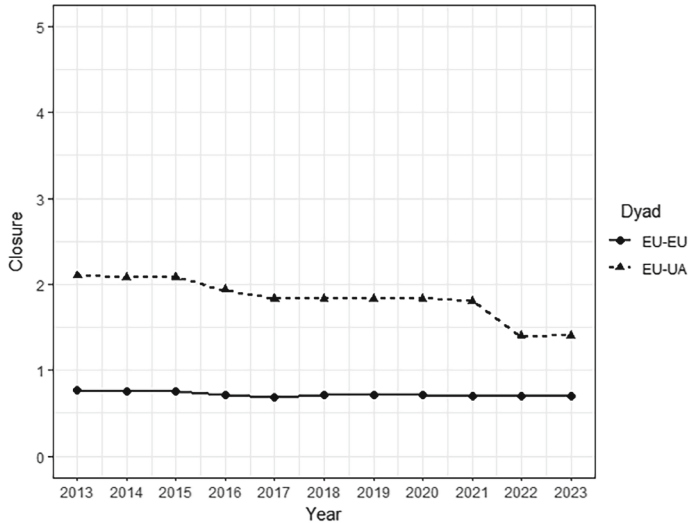


Fig. 1 Average closure over time, 2013–2023. Note: Annual mean of EU boundary closure for entries and exits across 31 boundaries

For one, the EU has increasingly included Ukraine in its political community. In terms of our categories, the EU-Ukraine boundary went from partly open (2013: 2.09) to mostly open (2023: 1.40). This movement towards increased openness initially occurred in a relatively continuous fashion, with the entry into force of the EU-Ukraine association agreement in 2016/17 as the most important context of opening. The war in 2022 produced a steep decline in boundary closure.

By contrast, the internal boundaries between EU member states have remained largely unaffected by the prolonged crisis. One notable boundary opening in response to the Ukraine crisis is provided for in the Gas Supply Security Regulation of 2017 (Regulation 2017/1938). This act repealed an earlier regulation of 2010, after a 2014 stress test “on the short-term resilience of the European gas system analysed the effects of a partial or complete disruption of gas supplies from Russia” and revealed sizable deficits (Recitals 4 and 5 of Regulation 2017/1938). Whereas the 2010 regulation only stipulated that national emergency measures must not harm gas supply to other member states, the 2017 regulation demands active solidarity: as a last resort, EU member states

must now help each other out to guarantee supply to the most vulnerable gas consumers.

After the start of the war and in response to unilateral Russian cuts in gas supply, the EU decided on stricter rules for gas storage and consumption. In June 2022, Regulation (EU) 2022/1032 obliged the member states to increase gas storage to be filled to at least 80% of the available capacity before the winter of 2022 and 90% before the winter of 2023. Member states without underground storage facilities must enter into burden-sharing agreements with those that have them. In August 2022, the member states agreed on a voluntary demand reduction of 15% during the winter of 2022/2023, which would have become mandatory in the event of an EU alert (Council Regulation (EU) 2022/1369 of 5 August 2022). This legislation left the existing solidarity mechanisms of gas supply in place but forced the member states to take measures that would ensure the functioning of EU-wide gas supply in case of shortages. In December, Council Regulation (EU) 2022/2576 introduced further solidarity measures—including the possibility to obtain supplies from other member states to secure critical gas volumes needed to maintain electricity systems.

Another notable exception is the slight increase in the congruence of the EU's external boundaries in response to the crisis. Denmark ended its treaty-based opt-out from the Common Foreign and Security Policy (CFSP) in 2022 and enacted a law informally mirroring the Temporary Protection Directive, from which it continues to have a formal opt-out. These formal and informal moves towards boundary congruence are in line with the expectation of external rebordering in response to military threats.

We will now look at the EU's boundary closure towards Ukraine in more detail. In terms of its average level of closure, the EU boundary with Ukraine has become significantly more open since 2014 (Fig. 2). In the process, Ukraine has moved increasingly to an insider position in the EU polity. At a symbolic level, this process has culminated in the country's designation as an official candidate for EU accession in June 2022 and the opening of enlargement negotiations in December 2023. In a bordering perspective, we note, however, that Ukraine's inclusion preceded this historic decision, and that Ukraine's candidacy as such has not had any tangible effect on the further opening of functional boundaries.

Moreover, the opening of the EU-Ukraine boundary proceeded in steps, rather than solely in reaction to the Russian invasion of February

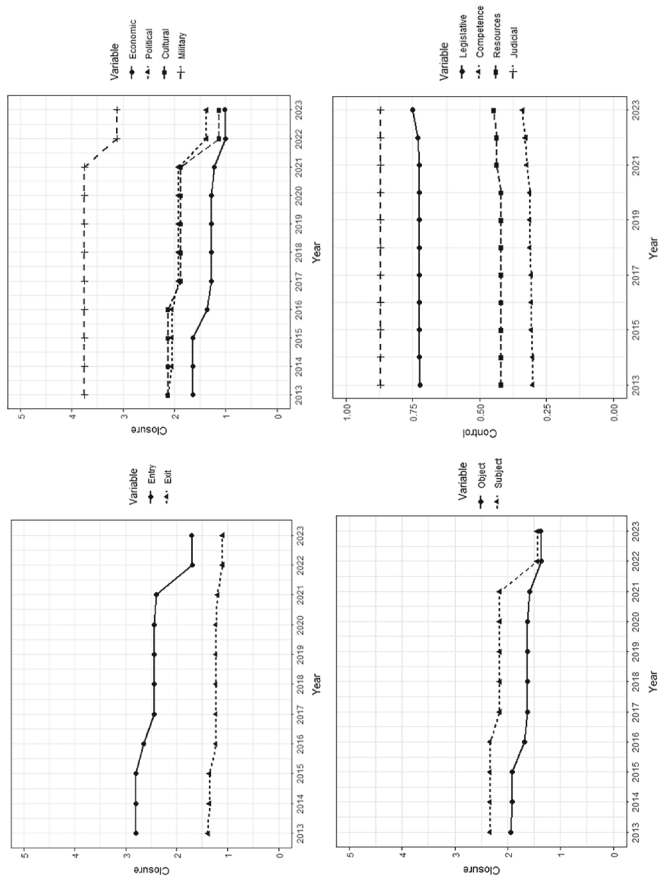


Fig. 2 Closure and control of the EU-Ukraine boundary, 2013–2023. Note: Clockwise from top left: annual mean of 31 boundaries for EU entry and exit; annual mean of EU boundary closure for entry and exit by functional boundary category; annual mean of EU boundary closure by subjects and objects; annual mean of EU boundary control by type of authority

2022. The first opening occurred with the entry into force of the EU-Ukraine association agreement (AA) in 2016 (trade-related provisions) and 2017 (full AA). The AA heralded a movement towards more openness of the EU-Ukraine boundary (2015: 2.08, partly open; 2017: 1.83, partly open), and did so across a variety of different functional boundaries. The “deep and comprehensive free trade agreement” (DCFTA) it contained affected a wide range of economic transactions and eased boundary restrictions for both subjects (service providers) and objects (industrial goods, agricultural goods, commodities, digital services, investment). The AA equally facilitated transactions across the political (political agents, government officials) and cultural (students, tourists, family) boundaries. The granting of visa-free entry into the Schengen area to Ukrainian citizens in 2017 had a particularly profound effect on the openness of the political and cultural boundaries between the EU and Ukraine. The military boundary, in turn, remained untouched and mostly closed (2017: 4.0).

The increasing openness of the EU-Ukraine boundary in the years after 2014 is also reflected in an increasing level of economic, political, and cultural transactions between both sides. Bilateral exchanges of industrial and agricultural goods as well as services reached new heights in the years after 2014. The same goes for the direct investments of European companies in Ukraine. In 2012, Russia was still Ukraine’s most important trading partner, accounting for 26% of its goods exports and 32% of imports. By 2021, the EU had become Ukraine’s most important trading partner by a wide margin, representing 43% of Ukrainian goods exports and 41% of its imports. Cultural exchanges between the EU and Ukraine increased, too. Millions of Ukrainians have profited from visa-free entry into the Schengen area since 2017, and the number of Ukrainian students enrolled at European universities has increased significantly, from roughly 18’000 in 2013 to 49’000 in 2017. In addition, political boundary transactions between the EU and Ukraine have increased. Since 2014, the EU Advisory Mission Ukraine (EUAM) has supported the country in reforming its civilian security sector. Between 2014 and 2021, the EU also provided more than 5 billion Euros in macro-financial assistance to Ukraine, adding to roughly 2 billion Euros of humanitarian aid.

The second and more momentous step towards an opening of the bilateral boundary between the EU and Ukraine occurred in reaction to the Russian invasion of February 2022 (1.42, mostly open). This time, the opening also affected transactions across the military boundary.

First, the EU relaxed its former restrictions on arms exports to support the Ukrainian military effort against the Russian invasion forces. Already from 2018 onwards, according to SIPRI data, a handful of EU member states (Czechia, Estonia, France, Lithuania, Poland) had begun to deliver mostly light weaponry to Ukraine. Responding to the Russian invasion of 2022 then, the EU coordinated its response, and the bulk of EU member states began providing military equipment and weapons bilaterally to Ukraine. The EU itself used the European Peace Facility (EPF) to reimburse member states for the purchase of lethal weapons and other military equipment for Ukraine. The Council had created the EPF as an off-budget instrument in 2021 to finance EU military missions and to assist third states or international organisations with defence- and security-related expenses. For the current budgeting period (2021–2027), the EPF was initially allocated 5.7 billion Euros. According to figures provided by the Kiel Institute for the World Economy (Trebesch et al., 2023), the EU and its member states provided direct military assistance worth 27.3 billion Euros as of May 2023. In addition, in October 2022, the EU agreed on the EU Military Assistance Mission (EUMAM) to train up to 15'000 Ukrainian Armed Forces personnel in several member states of the EU. EUMAM created the first opening of the EU boundary for the entry of military personnel from Ukraine to the EU. By contrast, the exit of EU military personnel to Ukraine remains formally fully prohibited.

The EU also eased many persisting restrictions on the economic, cultural, and political boundaries. In early March 2022, the Council invoked the Temporary Protection Directive (Council Directive 2001/55/EC) for the first time since its conclusion in 2001. Under temporary protection, all persons displaced from Ukraine enjoy a right to residence of up to three years in the EU, access to employment, health care, social assistance, housing, and the freedom to move freely within the Union. As such, the temporary protection directive affects the freedom of entry for subjects across the economic (workers, service providers), political (refugees, residents), and cultural (family, students, tourists) boundaries. According to Eurostat, more than 4 million non-EU citizens from Ukraine were under temporary protection in the EU in May 2023. In addition to its EPF funding, the EU has also provided, until the end of July 2023, around €56 billion in macro-financial assistance, budget support, emergency assistance, crisis response, and humanitarian aid. Total support (including military aid) by EU institutions and member states stood at €68.4 billion and thus only slightly lower than US support

at the end of May 2023 (Trebesch et al., 2023). In April 2023, Ukraine also joined the EU’s Civil Protection Mechanism, through which the EU coordinates humanitarian material assistance for its member states as well as several associated countries.

The EU further removed most of its persisting restrictions on the movement of economic objects. In March already, the EU integrated the electricity grids of Ukraine and Moldova into the Continental European Grid, which also allows for reverse flows and safeguarding Ukrainian energy supply from Europe. In May 2022, the EU temporarily removed all persisting restrictions, i.e. tariffs and quotas, on imports of industrial goods, agricultural goods, and commodities from Ukraine. So-called “Solidarity Lanes” were established to create corridors for the export of Ukrainian agricultural goods to world markets when Ukrainian Black Sea ports were blocked by Russia. According to the European Commission, Ukraine exported more than 63 million tonnes of goods via these Lanes, generating more than 26 billion Euro of revenue for Ukraine (Commission Implementing Regulation (EU) 2023/903 of 2 May 2023, Footnote 4). In the spring of 2023, however, in response to complaints from several member states neighbouring Ukraine about competition from lower-priced Ukrainian agricultural products such as wheat, maize, or sunflower seeds, the EU suspended the marketing and circulation of these products in Bulgaria, Hungary, Poland, Romania, and Slovakia (Commission Implementing Regulation (EU) 2023/903 of 2 May 2023), additionally providing 100 million Euros in compensatory relief for farmers in the five countries. However, these goods can still be transported to other EU member states via these countries.

4.2 *Control*

In the second step, we look at the control dimension of the EU’s internal and external boundaries. To this end, we construct a control index that ranges from 0 (= full national control) to 1 (= full supranational control). For the index, we standardise and average all four variables of control (legislative, executive competence, executive resources, judicial). Figure 3 provides an overview of the development of our control index for the two boundaries of interest across the entire period under investigation.

Two observations stand out: First, over both its internal and external boundaries, the EU has attained a by and large medium level of supranational control. This medium level of control reflects the discrepancy

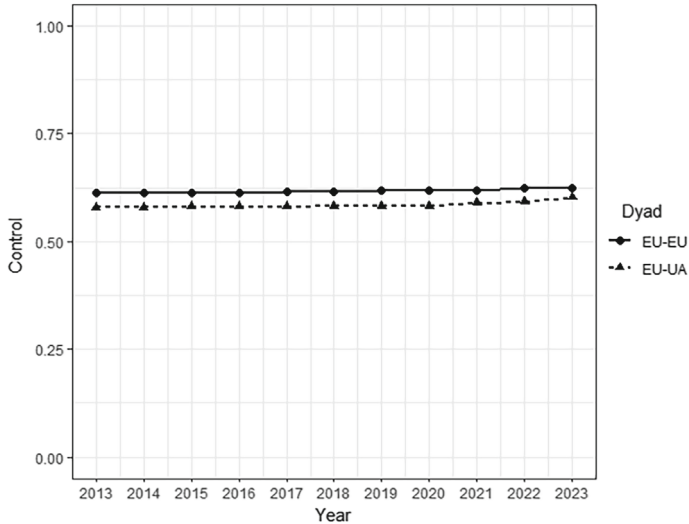


Fig. 3 Average control over time, 2013–2023. Note: Annual mean of boundary control index for entry and exit across 31 EU boundaries

between high standardised average scores for legislative (0.77 internal, 0.75 external) and judicial (0.97 internal, 0.87 external) control on one hand, and the relatively low levels of control over executive competence (0.33 internal, 0.34 external) and executive resources (0.42 internal, 0.45 external) on the other. This constellation is typical for the EU “regulatory state” (Majone, 1996), in which the supranational level enacts and adjudicates laws, but the national level enforces them.

Second, while the degree of EU control remained by and large constant over the bulk of the observation period, there have been slight upticks in the EU’s control over both its internal and external boundaries in reaction to the Russo-Ukrainian war. This is due to some supranational capacity creation since 2022, which affected primarily the EU’s executive competence and resources. Concerning the internal boundaries between its member states, the EU established some additional supranational capacity in connection with its 2022 legislation on gas supplies. The regulation on joint purchasing (Council Regulation (EU) 2022/2576) obliges the member states to pool some of their demand (15%

of national storage capacity) with a joint provider, thus creating a novel joint resource.

In a similar vein, concerning the external military boundary with Ukraine, the EU has extended existing and created novel capacities for the joint purchasing of weaponry and to support the ramping up of European weapons production. In March 2023, as the EU had already spent 3.6 billion Euros on support for the Ukrainian Armed Forces through the EPF, the fund was enlarged by 2 billion Euros, with the possibility of another increase of €5.5 billion until 2027. Additionally, the EU agreed in April 2023 to jointly procure ammunition for Ukraine, with the European Defence Agency acting as the joint facility to coordinate and contract on behalf of the member states. As of May 2023, 25 EU member states plus Norway signed the EDA's project arrangement for the collaborative procurement of ammunition. In May 2023, to accelerate the industrial production of ammunition in the EU, the Commission leveraged its industrial policy competences under Articles 114 and 173 TFEU to propose an Act in Support of Ammunition Production (ASAP), underwritten by a financial envelope of €500 million derived from the EU budget. In June 2023, the Commission proposed a Ukraine Facility of up to €50 billion for 2024–2027 to assist the recovery, reconstruction, and modernisation of Ukraine. And in July 2023, EEAS plans to replenish the EPF with another €20 billion in military aid for the same period were made public.²

In sum, there have been several initiatives to create additional and more stable EU-level capacities, which have resulted in a notable increase in EU resources dedicated to the defence of Ukraine. This is also reflected in our score for the EU's control over its external boundary with Ukraine, which increased from 0.59 in 2021 to 0.61 in 2023. Overall, while closure decreased rapidly across all domains in reaction to the war, control increased slightly. While the EU thus sticks to its regulatory template both internally and externally, it has shored it up with some additional capacity since 2022.

² EU plans €20B fund to stock Ukraine's military for years – POLITICO, 18 July 2023.

5 CONCLUSION

Russia's war against Ukraine has shaken Europe's post-Cold War order to the core. It has shattered Europeans' belief in the peaceful resolution of conflicts and the inviolability of borders, their confidence in economic integration as a way to overcome interstate rivalry, and their hope for an amicable coexistence between Europe and Russia. Vladimir Putin's attempt to annihilate the Ukrainian state and nation has left the European Union no choice but to respond swiftly and decisively. Which is precisely what the EU did. But has Russia's war also changed the course of European integration? So far, our analysis suggests, the effects have been ambivalent.

Our paper has proposed a bordering perspective on the European Union's reaction to Russia's aggression against Ukraine. According to this theoretical position, pioneered by Stein Rokkan (1974) and Stefano Bartolini (2005), a political system's ability to close and control its transactions with the outside world is the central precondition of its internal development. As expected by bordering theory, the EU has adjusted its external boundaries in response to the boundary shock of the Russian War on Ukraine. The EU has gradually opened its economic, political, cultural, and ultimately also its military boundaries to Ukraine. The first important step was the 2016/17 entry into force of the EU-Ukraine association agreement. Russia's all-out invasion in 2022 then heralded a comprehensive opening across all functional boundaries. In response to the Russian threat to its community, the EU has increasingly included Ukraine, starting with an opening of transactional boundaries and culminating in the latter's designation as an accession candidate in June 2022 and the kick-off of enlargement negotiations in December 2023.

By contrast, community building in Ukraine has not gone hand in hand with regulatory reinforcement and capacity creation internally. The regulatory boundaries between EU member states have remained largely unaffected by the crisis in its vicinity. The sole notable exceptions consist in the 2017 Gas Supply Security Regulation and its 2022 revision, which represents an important step towards internal boundary opening by demanding active solidarity among EU member states, and Denmark's decision to end its opt-out from the CFSP.

On the capacity side of the equation, the EU has slowly edged towards acquiring some novel competences and resources to control its boundary transactions. It extended the existing funding under the European Peace

Facility to pay for weapons and ammunition for the Ukrainian Armed Forces; it tasked the European Defence Agency with the joint procurement of ammunition for Ukraine; and the Commission has proposed an Act in Support of Ammunition Production (ASAP) that foresees cash support from the EU budget for European defence industry. While these developments have so far had a mere minor impact on the overall level of EU control, it remains to be seen whether the EU will be able to build some more capacity in the defence domain. For the time being, the bulk of the EU reaction to the Ukraine crisis has been in line with its longstanding regulatory template. The EU decides on the closure of boundaries, but their control remains primarily in national hands.

With the war having entered its third year and possibly continuing for quite some time, how likely is it that the conclusions we have drawn will stand? The EU's opening towards and inclusion of Ukraine seems enduring and will probably progress further. Having kicked off the accession process, the EU has firmly entered the territory of the "community trap" (Schimmelfennig, 2001), with Ukraine making a strong case that its fight is also in defence of Europe and its values. Former enlargement rounds were meritocratically organised around progress in economic and political development in the candidate countries. In the new era of "geopolitical enlargement", the EU seeks to integrate and protect candidates to defend its international order and to deny its geopolitical rivals territorial and political gains (Schimmelfennig, 2023). At the same time, the protectionist reaction to Ukrainian agricultural imports in neighbouring EU member states foreshadows future tensions and conflicts on Ukraine's membership bid. Eventually, Ukraine's record on the rule of law and the fight against corruption is likely to return to the centre stage as the accession process progresses.

The further internal development of the EU in response to the war seems equally open-ended. So far, the Union has fared well with its predominantly regulatory approach and reliance on national capacities. Russia's war has not posed a challenge to the inner workings of the EU as, for instance, the Euro crisis did, which endangered the very survival of a core achievement of European integration. Of course, it need not remain this way. In past crises, the EU relied initially on regulation, too, yet solely to the point where the costs of the regulatory status quo began exceeding the costs of supranational capacity building. European state elites are no diehard sovereignty maximisers but, by and large, functional problem-solvers (Freudlsperger & Jachtenfuchs, 2021). Where

EU-level capacities seem inevitable to stem a crisis and regain control over the Union's external boundaries, elites tend to regard their creation as the lesser evil. While supranational capacity building is thus in principle possible in exceptional circumstances, the EU was able to stave off the energy crisis of the summer of 2022 with only minor capacity development, and a Franco-German proposal to entrust the European Public Prosecutors Office (EPPO) with the internal enforcement of the sanctions regime vis-à-vis Russia has not come to fruition. Interestingly, the EU has made considerable strides in the creation of common resources for the joint procurement of weaponry and ammunition. What remains highly improbable nonetheless, against the backdrop of the reinvigorated presence of NATO, is any meaningful EU involvement in territorial defence. Even in the face of Russia's war machine, and in contrast with a main proposition of bellicist understandings of "integration through war", the EU is as unlikely to become a Westphalian state as ever.

APPENDIX

REFERENCES

- S Bartolini 2005 *Restructuring Europe: Centre Formation System Building and Political Structuring Between the Nation-State and the European Union* Oxford University Press
- TA Börzel 2005 Mind the gap! European integration between level and scope *Journal of European Public Policy* 12 2 217 236 <https://doi.org/10.1080/13501760500043860>
- A Bradford 2012 The Brussels Effect *Northwestern University Law Review* 107 1 1 68
- M Eilstrup-Sangiovanni 2022 The anachronism of bellicist state-building *Journal of European Public Policy* 29 12 1901 1915 <https://doi.org/10.1080/13501763.2022.2141825>
- C Freudlsperger M Jachtenfuchs 2021 A member state like any other? Germany and the European integration of core state powers *Journal of European Integration* 43 2 117 135 <https://doi.org/10.1080/07036337.2021.1877695>
- C Freudlsperger F Schimmelfennig 2022 Transboundary crises and political development: Why war is not necessary for European state-building *Journal of European Public Policy* 29 12 1871 1884 <https://doi.org/10.1080/13501763.2022.2141822>

- P Genschel 2022 Bellicist integration? The war, the European Union, and core state powers *Journal of European Public Policy* 29 12 1 16 <https://doi.org/10.1080/13501763.2022.2141823>
- P Genschel M Jachtenfuchs Eds 2014 *Beyond the Regulatory Polity?* Oxford University Press
- P Genschel M Jachtenfuchs 2016 More Integration, Less Federation: The European Integration of Core State Powers *Journal of European Public Policy* 23 1 42 59 <https://doi.org/10.1080/13501763.2015.1055782>
- Hintze, O. (1994). Military Organisation and the Organisation of the State. In J. A. Hall (Ed.), *The State: Critical Concepts* (pp. 181–202). Routledge.
- Hirschman, A. O. (1970). *Exit, Voice, and Loyalty: Responses to Decline In Firms, Organisations, And States*. Harvard University Press.
- Hirschman, A. O. (1978). Exit, Voice, and the State. *World Politics*, 31(1), 90–107.
- Kaspersen, L. B., & Strandsbjerg, J. (Eds.). (2017). *Does war make states?: Investigations of Charles Tilly's historical sociology*. Cambridge University Press. <https://doi.org/10.1017/9781316493694>
- RD Kelemen KR McNamara 2022 State-building and the European Union: Markets, War, and Europe's Uneven Political Development *Comparative Political Studies* 55 6 963 991 <https://doi.org/10.1177/00104140211047393>
- S Lavenex F Schimmelfennig 2009 EU rules beyond EU borders: Theorising external governance in European politics *Journal of European Public Policy* 16 6 791 812 <https://doi.org/10.1080/13501760903087696>
- D Leuffen B Rittberger F Schimmelfennig 2013 *Differentiated integration: Explaining variation in the European Union* Palgrave Macmillan London
- Majone, G. (1996). *Regulating Europe*. Routledge. <https://doi.org/10.4324/9780203439197-23>
- McNamara, K. R., & Kelemen, R. D. (2022). Russia's invasion of Ukraine is remaking Europe. Monkey Cage Blog. *The Washington Post*. <https://www.washingtonpost.com/politics/2022/02/28/russia-ukraine-european-union/>
- WH Riker 1964 *Federalism: Origin, operation, significance* Little Brown
- WH Riker 1987 *The Development of American Federalism* Kluwer Academic Publishers <https://doi.org/10.1017/S153759271>
- S Rokkan 1974 Entries, voices, exits: Towards a possible generalisation of the Hirschman model *Social Science Information* 13 1 39 53 <https://doi.org/10.1177/053901847401300103>
- Schimmelfennig, F. (2023). The Advent of Geopolitical Enlargement and its Credibility Dilemma. In J. Dzankic, S. Kacarska, & S. Keil (Eds.), *A Year Later: War in Ukraine and Western Balkan (Geo) Politics* (pp. 185–193). European Union. <https://doi.org/10.2870/275946>

- F Schimmelfennig 2001 The community trap: Liberal norms, rhetorical action and the eastern enlargement of the European Union *International Organisation* 55 1 47 80 <https://doi.org/10.4324/9780203008720>
- F Schimmelfennig 2021 Rebordering Europe: External boundaries and integration in the European Union *Journal of European Public Policy* 28 3 311 330 <https://doi.org/10.1080/13501763.2021.1881589>
- F Schimmelfennig T Winzen 2020 *Ever Looser Union?* Oxford University Press <https://doi.org/10.1093/oso/9780198854333.001.0001>
- Tilly, C. (Ed.). (1975). *The Formation of National States in Europe*. Princeton University Press.
- C Tilly 1990 *Coercion, Capital, and European States, AD 990–1990* Basil Blackwell
- Trebesch, C., Bushnell, K., Franz, L., Frank, A., Kharitonov, I., & Schramm, S. (2023). *Ukraine Support Tracker*. IFW KIEL. <https://www.ifw-kiel.de/topics/war-against-ukraine/ukraine-support-tracker/>
- Weber, M. (1978). *Economy and Society: An Outline of Interpretive Sociology* (G. Roth & C. Wittich (Eds.)). University of California Press.
- Wimmer, A. (2013). *Ethnic Boundary Making*. Oxford University Press.

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Integration and Modernisation: EU's Association Agreement with Ukraine

Rilka Dragneva and Katarzyna Wolczuk

1 INTRODUCTION

In concluding Association Agreements (AA), the EU embarked on a profound upgrade of its relations with Ukraine. Described as the ‘most ambitious agreement the European Union has ever offered to a non-Member state’ (Van Rompuy, 2013), the agreement covers all aspects of cooperation and aims to establish a form of political association and economic integration, reflecting the interest of Ukraine to pursue closer relations with the EU. In economic terms, the AA had two overarching objectives: to prepare the gradual integration of the partners into the EU internal market through the setting up of a deep and comprehensive free trade area (DCFTA) and to support the partners’ efforts to complete the transition to a functioning market economy (see, for example, Article 1, 2(d) EU-Ukraine AA). Importantly, this ambition in the scope and depth of cooperation is matched by the creation of institutional tools centred on the binding adoption of vast swathes of the EU *acquis*. Even though this

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chapter deals with the EU-Ukraine Association Agreement, the analysis also directly applies to Moldova and Georgia.

In itself, the AA with DCFTA (AA/DCFTA) is a novel legal instrument and its design is a testimony to the EU's ingenuity (Van der Loo, 2016; Van der Loo, Van Elsuwege & Petrov, 2014; Van Elsuwege & Van der Loo, 2017). Yet, the use of a complex, comprehensive and binding agreement to deliver the dual objective of deep integration and modernisation is without precedent in the EU's external relations. Exporting the EU *acquis* in the context of trade agreements with third countries has a long pedigree (Cremona, 2010; Lazowski, 2008). These, however, have tended to be partners with strong domestic institutions and developed economies, such as the members of the European Economic Area (EEA): countries capable of implementing the extensive obligations needed for deep integration with the EU but unwilling to become its members. When the transfer of the *acquis* has taken place in the service of development, this has been in the context of preparing prospective members to assume membership obligations, as in the case of the Central and East European or the Western Balkan countries. In brief, the formula of concluding a deep and comprehensive trade agreement, based on a wholesale export of the *acquis*, and offered outside a membership context to a politically and economically weak partner, is untested.

It is puzzling, then, that the fundamental nature of the AA/DCFTA has not been sufficiently scrutinised. This is particularly surprising given the prior warnings about key elements of the *acquis*-centred formula. For example, there has been much scepticism about the transformative capacity of the *acquis*—when its adoption was framed as a vague and general undertaking, as in the European Neighbourhood Policy (ENP) (Cremona, 2009; Hoekman, 2007), as well as a structured and binding commitment with membership as the prize, as in the Eastern enlargement (Grabbe, 2003).

Similarly, it has been pointed out that the developmental effects of trade agreements in general are uncertain, with much depending on their appropriate design and capacity for effective implementation (Hoekman, 2011). These concerns are even more pertinent in the case of the AA/DCFTA given the complexity and enormous scale of what is required of the partner countries coupled with the mismatch in the parties' expectations as to the *finalité* of the association process and the underlying weakness of their state and economic institutions.

To some extent, this omission can be explained by the prominence of the geopolitical repercussions of the EU-Ukraine agreement, culminating in the political changes in Ukraine, economic disruptions and military aggression from Russia. The AA/DCFTA grabbed the centre of international attention as no other international trade agreement hitherto had (Dragneva & Wolczuk, 2015). Ironically, it may have solidified faith in the presumed ability of the AA/DCFTA to ‘drive forward a programme of comprehensive modernisation and reform based upon shared values, political association and economic integration’ (EU, 2013). While the candidate status granted to Ukraine in June 2022 and opening accession negotiations in 2024 rectified the lack of political *finalité* of the AA/DCFTA, it does not on its own resolve its underlying contradictions in the context of a prolonged—even if ‘enhanced’—association (Delcour & Wolczuk, 2023).

This chapter examines the key dimensions and premises of the Association Agreement and its implications for achieving the EU’s professed goals. In doing so, we start by discussing the origins of the AA/DCFTA. The context in which it was conceived and designed is vital to understand the assumptions and objectives underpinning its content. It also sets the scene for the key challenges that affect its implementation. We, then, focus on the nature of the AA/DCFTA, identifying the features that make it stand out from comparable agreements concluded by the EU but also help understand its complexity and lines of tension. In the next section, we draw out the main problems derived from the analysis that affect the implementation of the AA/DCFTA and require further academic and policy attention. Finally, we focus on a raft of additional measures adopted by the EU to complement the AA/DCFTA to rectify the ‘blind spots’. This point is especially important in the context of Russia’s war against Ukraine and the need for reconstruction. The war amplifies the misconception about the AA/DCFTA as a ready-made blueprint for domestic reforms, including its relevance for reconstruction.

2 ORIGINS OF THE ASSOCIATION AGREEMENTS

The origins of the AA/DCFTA lie in the demand for closer integration emanating from Ukraine. As will be argued, the EU almost fully accommodated Ukraine’s demands by drafting an ambitious, comprehensive and integration-oriented agreement, except for the most important and sensitive demand: a membership perspective. At the same time, both parties

shared certain assumptions which were not questioned during the negotiations but nevertheless strongly shaped the agreement. Subsequently, the EU-Ukraine AA/DCFTA provided an almost ‘cut and paste’ template for the AA/DCFTAs with Moldova and Georgia with all the objectives and assumptions ‘spilling over’ into these agreements too. As a result, the origins of the AA/DCFTA with Ukraine have had profound implications for all the AA/DCFTAs in the EU’s Eastern neighbourhood.

Therefore, it is important to underscore that the demand for a new bilateral contractual framework came from Ukraine: the country leaders asked the EU for a more comprehensive, binding and ambitious agreement.

2.1 The AA/DCFTA Negotiations

The content of the AA/DCFTAs was shaped by the EU’s Global Strategy on using comprehensive trade agreements as a key tool in its external relations (as will be discussed in the next section), the ambitious of the ENP to promote ‘integration without membership’ and the specific dynamics of EU-Ukraine bilateral relations.

The negotiations on what was called the ‘new enhanced agreement’ started in 2007 whereas the negotiations on the economic part of the agreement (the DCFTA) followed Ukraine’s accession to the World Trade Organization (WTO) in 2008. The way the negotiations were conducted reflected the difficulties on both sides and their diverse assumptions.

On the EU side, the mandate for a new Agreement as adopted by the Council was rather vague and weak; it merely asserted that ‘through this Agreement, the European Union aims to build an increasingly close relationship with Ukraine, aimed at gradual economic integration and deepening of political cooperation’ (Council of the EU, 2007). Without a strong mandate from the Council, the EU negotiating team had limited room for manoeuvre to commit the EU to Ukraine’s specific demands on a variety of issues (e.g. tariff-free quotes for sensitive products such as poultry and honey).

In contrast, the Ukrainian negotiators had a strong political mandate for negotiating a new agreement which would pave the way to membership. Ukraine had voiced membership aspirations since the late 1990s, thereby, the negotiators were keen to obtain the membership perspective in the preambular of the agreement and were keen to take on extensive,

detailed and binding legal commitments vis-à-vis the EU. This 'maximalist' demand to take on large swathes of the *acquis* stemmed from the combination of two preferences. First, driven by political and security considerations, the Ukrainian political class made vocal demands for explicit EU conditionality to kick-start Ukraine's 'candidate trajectory'. Second, the EU rules came to be regarded by reform-minded domestic actors as a template for socio-economic modernisation, facilitated by investment, credits and market access. Inspired by the example of Central Europe where preparation for accession was closely intertwined with the extensive socio-economic development of the accession countries, not least because of the availability of pre-accession funds. Thus, capitalising on membership aspirations officially proclaimed by the Ukrainian political leaders, state officials in charge of relations with the EU promoted extensive 'import of the *acquis*' in a manner similar to the anticipatory adaptation observed in East-Central European states in the early 1990s (Langbein & Wolczuk, 2011).

Undoubtedly, the configuration of constraints on the EU's part made it difficult to meet Ukraine's expectations. During the negotiations, this restraint was deepened due to the wider regional upgrade launched with the 2009 Eastern Partnership. Under the Eastern Partnership, the AA/DCFTA-DCFTA were offered to other Eastern neighbouring countries. Moldova, Georgia and Armenia were eager to take up the offer and launch negotiations. Therefore, the agreement with Ukraine soon came to serve as a template for the subsequent association agreements, when negotiations started in 2010 with Moldova, Armenia and Georgia (albeit only Moldova and Georgia concluded theirs).

No doubt, the comprehensiveness of the AA/DCFTA model offered many advantages for the EU, not least preventing time-consuming negotiations on various aspects of the *acquis*. As Magen (2007) argues '[C]ommission officials are deeply averse to the possibility of having to repeat the Swiss experience of tailor-made, sector-specific agreements in future negotiations with other EU partners' (pp. 385–386).

It is important to stress that within the EU, the very decision to launch negotiations with Ukraine was perceived as a significant political concession and, indeed, a kind of 'reward' for Ukraine's democratic breakthrough. In terms of trade alone, the EU had little interest in concluding a DCFTA with Ukraine, which accounted for only 1.4% of EU exports—thus, making it difficult to justify such an agreement—and any extensive negotiations—on economic grounds alone. This accounts

for a low priority given to the negotiations and content of the AA/DCFTAs in the EU institutions at the time with very limited human resources in the European Commission being devoted to the task. This scarcity of personnel resulted in mechanistic uploading of the *acquis* into the Agreement as a form of legal protectionism (see below).

It is clear that during negotiations, neither the EU nor the national officials negotiating the AA/DCFTA fully grasped the nature of all the challenges the agreement entailed for Ukraine. Indeed, it could be argued that there was a major disjuncture in perceptions. As noted above, Ukrainian officials were eager to take on asymmetric commitments to pave the way to membership. At the same time, EU officials were only too keen to capitalise on this asymmetric interest. As will be discussed further, EU officials simply assumed that, first, the rules themselves provide a pathway to modernisation and, second, the countries pursuing European integration have the requisite capacity to take on and administer a highly complex and sophisticated corpus of common rules.

Overall, both the EU and Ukraine were excessively confident in the transformative potential of the AA/DCFTA. Ukraine agreed to very extensive import of the *acquis*, without much pre-emptive deliberation on the rationale and capacity to do so. The resulting implications of such an approach to the design of the AA/DCFTA became apparent during the implementation of the AA/DCFTA, as will be argued below.

3 THE ASSOCIATION AGREEMENT: WHAT IS IN A NAME?

Responding to Ukraine's demands for an 'association agreement', the EU delivered a comprehensive package for a privileged relationship subject to the above-mentioned political and organisational constraints. While this was a *novel* agreement, the AA/DCFTA was not necessarily *original*: it drew on a number of key legal templates and premises. Given the strong asymmetries in the negotiation process, it is critical to recognise how those sources conditioned the distinctive features of the AA/DCFTA. While the EU's approach facilitated the delivery of the AA/DCFTA, it planted the seeds of their challenges. The purpose of this section is not to undertake a detailed legal analysis of the AA/DCFTA which has been done elsewhere (Van der Loo, 2016), but to demonstrate how and why the EU framed their essential features: namely, the deep and comprehensive free trade agenda and the wholesale export of the EU *acquis*.

The format of the ‘association agreements’ has been used by the EU to structure its external relations for many decades (Koutrakos, 2015; Van Elsuwege & Chamon, 2019). The key feature distinguishing them from other tools, such as simple trade or partnership agreements, is that they set up ‘special relationships’ with designated partners.¹ ‘Special’ in this context has typically entailed the commitment to political cooperation, trade liberalisation and sectoral cooperation, as well as setting up joint institutions. Other than that, these have been agile instruments used in relations with neighbours as well as non-neighbours with varying contents, scope, political and economic objectives, depending on the political context in which they are placed. For example, association agreements have facilitated accession to the EU or served to deflect it. In terms of economic objectives, they have enabled advanced integration into the EU single market or limited themselves to trade liberalisation. Some have had an explicit modernising dimension and others are concluded with partners with comparable level of economic and political development. The flexibility of the template has also meant that they can be adapted and complemented, thus upgrading the relationships between their signatories.

Against this background, the AA stands out as a particularly advanced form of membership-deflecting association: it is a voluminous agreement, encompassing the whole spectrum of EU activities, aiming for an advanced integration into the EU internal market and providing for extensive regulatory approximation. It has a modernising dimension, which firmly rests on the assumed transformative powers of the *acquis*.

3.1 *The Deep and Comprehensive Free Trade Agenda*

In terms of its economic agenda, the AA centres on the provision of the DCFTA as a pathway to the integration of Ukraine into the EU internal market. The commitments are asymmetric in favour of Ukraine, similar to other the EU’s association agreements with economically weaker partners, such as the Western Balkan neighbours. However, unlike agreements that centre on liberalised market access or only gradually evolve to

¹ This characteristic was underscored in the *Demirel* case of the ECJ, Case 12/86, ECLI:EU:C:1987:400, para 9, according to which the association agreements (with Turkey in that case) creates ‘special, privileged links with a non-member country which must, at least to a certain extent, take part in the Community system’.

deeper economic relations, the AAs aim for the gradual integration of the partners' economies into the EU internal market. Yet, the concept of 'integration' in this context is a policy construct rather than a legal given: indeed, there is no defined legal standard as to how a third country and a non-member can 'integrate' into the EU (Van der Loo, 2016).

The ambition of the AA/DCFTA was defined by the EU's wider 'deep and comprehensive trade' framework.² As a result, the EU-Ukraine agreement liberalised substantially all trade in goods and services, but also covers WTO-extra issues, such as investment, public procurement, competition, intellectual property and other regulatory matters. The key aim is to tackle non-tariff barriers to trade and thus secure a genuinely free movement of goods, services and capital above and beyond the removal of border restrictions.

3.2 *Legal Approximation*

The AA/DCFTA adopted not only the maximalist agenda of the Global Europe agreements but also a highly ambitious approach to the elimination of non-tariff barriers. In its post-2006 preferential trade agreements, the EU followed the global trend of growing complexity and greater legalisation in the means to reduce regulatory obstructions (Young & Peterson, 2006). Yet, in doing that, Brussels relied on a variety of mechanisms: from establishing the equivalence of different rules and convergence based on international rules to the export of European standards. Indeed, Young argued that the EU has not sought to aggressively export its rules, mindful of the opposition to regulatory change in the partner countries that may endanger trade liberalisation altogether (2015). This is not the case with the AA/DCFTA, which aims to eliminate non-tariff barriers on the basis of extensive adoption of the EU *acquis*. In this respect, the AA/DCFTA resembles the EU's single market 'integration agreements' concluded with the countries of the European Economic Area and some European micro-states,³ but also reflects the legacies of the EU's Eastern enlargement.

² As Van der Loo points out, indeed, the EU-Ukraine DCFTA was modelled on EU-South Korea FTA (2016: 222).

³ The term 'integration agreements' is an academic rather than a legal classification.

The integration agreements are concluded with EU's developed European neighbours which have sought economic closeness without the political costs these countries associate with membership in the EU. They enable the participation of these countries into the internal market (in its entirety or in some of its sectors) on the basis of incorporating (a selection of) the EU *acquis* in their legal orders (Lazowski, 2008). This entails the exceptional situation that the principles, concepts and provisions of the EU *acquis* are incorporated, interpreted and applied 'as if the third state is part of the EU' (Maresceau, 2010, p.2). While the EU has adopted various models of integration agreements, they all aim for legal homogeneity, thus going beyond clauses on legal approximation providing for the transposition of EU law in the domestic legal system of third parties, known from the EAAs. This requirement is fundamental to the effective participation in the internal market but is also vital to protect its integrity. Indeed, as Maresceau (2010, p.10) argues, these agreements cannot survive without the third party's effective compliance with the EU *acquis*. Unsurprisingly, achieving and maintaining a high standard of legal homogeneity across an expanded internal market is a tall order for a partner and is conditional on its effective judicial and administrative capacity. On this basis, the single market-style agreements were deemed by some as too burdensome for the Eastern partners (Lazowski, 2008).

The AA/DCFTA adopts the logic of the integration agreements to the extent that they rely on the adoption of the EU *acquis* as the main mechanism for removing non-tariff barriers and achieving regulatory harmonisation. They offer some relaxations accounting for the relative weakness of the Eastern partners. Yet, the mitigations are combined with added protective features based on enlargement conditionality templates. On balance, they help offset the potential costs of the partners' weakness in the EU internal market rather than help with the difficulty and complexity of the task at hand.

Firstly, the legal approximation is the bedrock of the AA/DCFTA. While the concept refers to the process of incorporating EU rules into domestic legislation, what is required varies across chapters.⁴ The partners' commitments in legal approximation are most extensive in the chapters regulating the strongest prospective access to the internal market, namely:

⁴ We use 'legal approximation' as a 'catch-all' concept given its wide use in the AA countries and in interactions with the EU institutions.

technical barriers to trade (TBT),
 sanitary and phytosanitary requirements (SPS),
 customs and trade facilitation,
 establishment,
 services,
 electronic commerce,
 public procurement and
 competition.

In those areas, the partners undertake to adopt predetermined lists of EU legislation to be adopted within an agreed timeframe. For most listed chapters, this legislation is included in Annexes to the Agreement and is subject to strict deadlines for implementation. In other areas, the AA/DCFTA contains some flexibility in that specific legislation is not listed, but left to the partners to determine subsequently. For example, in relation to SPS and TBT, the AA/DCFTA provides only a number of priority areas of the EU *acquis* on the basis of which the countries have to develop their own strategy for implementation. Similarly, in some sectors there are no specific deadlines, with extensive latitude regarding the time of implementation. In public procurement, for example, implementation is prioritised by distinguishing five progressive phases of legislative approximation and implementation (Annex XXI, EU-Ukraine AA).

Such selectivity is intended to facilitate adjustment in areas of difficult or costly implementation. This, however, does not change the fundamental premise that Ukraine is to import vast swathes of the *acquis* over a relatively short period of time. Indeed, it is noteworthy that the adoption of EU law underpins not only Title IV dealing with the DCFTA but also Title V on Economic and Sectoral Cooperation, including a wide range of areas, including transport, science and the environment. Such a scope, it has been observed, well exceeds what is required under other association agreements, such as the Stabilisation and Association Agreements (SAAs) with the Western Balkans, where the import of the *acquis* is justified by a membership perspective (Blockmans, 2017). Thus, the adoption of the *acquis* serves not just to achieve regulatory alignment in enabling integration, but the wider objective attributed to it, as will be discussed further below.

This general rule, however, is made considerably more burdensome by the enhanced procedure envisaged in specific chapters: they contain duties to notify new legislation, add it to the list and transpose it into domestic

legislation. In the area of services, for example, Ukraine must take on any modification of the corresponding EU law—its ability to decline this is highly limited. This is clearly driven by the EU's needs and is unusually strict and complicated by comparison with other association agreements (Van der Loo, 2016). While the dynamic aspect of the AA was attractive to Ukraine's negotiators as a pathway to develop the scope of integration without modifying the agreement itself, it amplifies the challenges of implementing the agreement. It places an onerous task on the AA countries to follow the 'moving target' of the evolving *acquis*, regardless of their specific needs and challenges.

Thirdly, the AA/DCFTA differs radically from other integration agreements in that they contain an advanced system of disciplining measures, inspired by the enlargement template. In addition to the general monitoring powers of the association bodies, the chapters related to the internal market, such as TBT, SPS, establishment and services and public procurement, contain enhanced procedures. On the one hand, in the spirit of the ENP, the purpose of such procedures is to induce domestic reforms with integration as the reward. On the other hand, these procedures afford an enhanced protection for the EU. While other trade agreements grant market access upon the mere commitment of the partners to legal approximation, the AAs condition market access on the country's actual track record in legislative approximation.

Thus, while generous in promising the potential reward, the EU has been keen to ensure that the functioning of the internal market as a whole is not disturbed as a result of it. As Dodini and Fantini (2006) point out, this is justified by the EU's need to ensure that the single market is not hollowed out by the states that are actually not ready to respect its rules. This is one of the most visible demonstrations of the fact that, given the level of development of the partner countries, domestic reform is treated as a precondition for integration.

As in relation to the scope and depth of legislative approximation, the type of reward and conditionality vary from chapter to chapter, thus adding further complexity to the AA/DCFTA. In services, for example, Ukraine is required to prepare a detailed roadmap and regularly report on its progress by submitting reports to the European Commission, followed by a transposition table to reflect the exact way in which it corresponds to the *acquis*. Only if the European Commission positively assesses Ukraine's progress, it can propose to the Trade Committee that access to the EU's internal market is granted. This example highlights the extent to which

the protective function of the conditionality is enhanced by the institutional dynamic of the Association bodies. Access to the internal market is to be granted by consensus. Yet, a refusal by the EU to grant such access may or may not depend on Ukraine's actual implementation record. For example, it could reflect internal considerations or sensitivities within the EU. (This was the case with the EU's delay in granting visa liberalisation to Ukraine, despite Ukraine complying with all the conditions. Georgia was subject to similar delays.)

This is particularly problematic given that the standard for implementing the approximation commitment was not necessarily clear: for example, the AA/DCFTA refers to 'alignment with', 'achieving conformity with', 'incorporating into the legislation of' and 'other legal terms to convey the nature of the partners' obligation, thus, potentially contributing to differences in interpretation and standards of assessment (Van der Loo, 2016, p. 320f). This only enhances the problem that far from being a ready-made template, the *acquis* is not necessarily straightforward to interpret and implement by the countries without the capacity and experience of doing so. According to Magen:

far from being a reasonably clear, homogenous, fixed and prospectively knowable standard, the notion of the *acquis* is, in reality, opaque and contested—raising both substantive and procedural difficulties for any third country contemplating full or partial alignment with it (Magen, 2007, p.366).

Thus, it is hard to avoid the conclusion that prior to granting Ukraine candidate status, the agreement was a mix of different commitments. While no modern trade agreement is simple and brief, the AA excels in its complexity and variety of types of commitments and procedural frameworks across chapters.

4 THE 'HOLY GRAIL' OF THE EU ACQUIS: ASSUMPTIONS AND BLIND SPOTS

As shown above, the legal approximation obligation under the AA is far-reaching and extensive and exceeds what is required for the (partial) integration into the EU internal market. Indeed, its extent reflects the belief in the modernising potential of the *acquis*: that overhauling a legal system by adopting the developed template of the EU law will propel the

development of the EU's partners. This assumption underpins the design and content of the AAs, yet it is not coherently articulated or properly justified.

Perhaps the most common argument for exporting the *acquis* has been that of efficiency. The EU *acquis* is viewed as offering a modern, ready-made regulatory framework. This framework is deemed superior to what other international actors can offer in terms of the quality and density of regulation, the comprehensiveness of reform it entails and the degree to which it avoids certain (e.g. neoliberal) controversies. It is the ultimate cost-saving transplant (Miller, 2003) as it makes drafting 'easier than developing one from scratch' (Dodini & Fantini, 2006, p.517). At the same time, it has a reputational function, signalling to international as well as domestic audiences an alignment with what the EU stands for in terms of political and economic values.

The belief that the EU *acquis* will deliver is undoubtedly reflective of the EU's own experience. Indeed, the EU's success in reaping the benefits of regional integration has been projected not only to the neighbourhood but also in its trade politics more generally (Young & Peterson, 2006). The attraction of the EU model is also justified by reference to non-members, such as the EEA countries, who, while being traditionally lukewarm to the EU, have been willing to forfeit parts of its sovereignty to realise the advantages of participating in the EU internal market through the EEA (Dodini & Fantini, 2006).

In the case of the Eastern enlargement, in particular, it was suggested that adopting the *acquis* 'could result in a growth-enhancing upgrade in the regulatory environment' (European Commission, 2006).⁵ In the process, the EU came to see itself as particularly effective in promoting domestic change in acceding countries. The EU engendered domestic change because the prospect of integrating with the EU exercised a mobilising effect on a range of domestic actors, especially the political class and bureaucracy. As a complex and lengthy process involving virtually all parts of the state, European integration penetrates deep into the functioning and functions of the state, ranging from food safety standards to anti-monopoly policies.

⁵ This argument relies on the World Bank regulatory quality indicators showing a positive difference between the scores of the new EU member states and those of neighbouring countries to suggest that EU *acquis* would represent an improvement over the latter's current regulatory environment (European Commission, 2005: 13–14).

Further, exporting the *acquis* has a protective function for the EU in two ways. First, the AA/DCFTA facilitates ‘deeper’ integration, thereby offsetting the critique of ‘fortress Europe’ (Wolczuk, 2016), while at the same time, the agreements aimed to decouple deep integration from membership, thus helping to prevent further enlargement. Second, as already noted above, promoting the export of extensive and detailed rules—above and beyond what might be needed for integration—is a way to safeguard the EU single market from unanticipated consequences of engaging with a less developed partner (Dodini & Fantini, 2006).

Following the success of enlargement in 2004, and faced with greater internal diversity, the *acquis* crystallised as the backbone of the post-enlargement foreign policy in the eastern neighbourhood, one that EU institutions and (old and new) member states were able to converge on. Thus, the EU pragmatically promoted what was least contentious amongst the ‘old’ and ‘new’ member states—the needs to adhere to the corpus of norms and rules (Lightfoot et al., 2016).

All these drivers have produced an approach which places a heavy weight on the role of adopting the *acquis*. This law-centred agenda has four important implications for the design of the AA: not only in terms of content but also in what was left out of the negotiations and the text of the agreement. Thus, they also indicate some of the main fault-lines in the effectiveness of the AA.

First, the assumption tended to be that the recipient country was a ‘sail-ready but empty vessel’: that Ukraine had sufficient capacity to opt for and implement the chosen regulatory templates, therefore, they are just undertaking a dispassionate search for the best regulatory model. As noted above, there was a convergence between the EU and Ukraine, and the extensive alignment with the *acquis* was beneficial. Cherishing membership aspirations, Ukraine was particularly eager to prove its potential and capacity to become a candidate state, so the negotiators were hardly inclined to mention limited state capacity. While some domestic limitations were noted, they were treated essentially as limitations of administrative capacity to develop a regulatory framework from scratch rather than a profound weakness of governance or, indeed, an instrumental approach to integration with the EU by the domestic political elites (Langbein and Wolczuk, 2011).

Second, as it has transpired during their implementation, the AA on its own does not—and cannot—aim to address many of the fundamental and

urgent issues that Ukraine faced with regard to strengthening state institutions and socio-economic modernisation. The suitability of the single market *acquis* as a ready-made template for post-communist reform was already questioned during enlargement. As Grabbe (2003) points out, the EU rules were never designed as a development agenda for poorer countries; instead, they are the incremental results of negotiations, agreements and compromises between member states on common rules for themselves over decades of European integration.

The EU has never had to develop the *acquis* on fundamental pillars of any state (Mathernova & Wolczuk, 2020). While the *acquis* is dense and detailed on specific policy areas, such as food safety standards or state aid, it does not offer detailed prescriptions on how to conduct key reforms of the state, such as public administration reforms, anti-corruption policies, reforms of the banking sector, decentralisation or privatisation. In essence, there is no *acquis* on prerequisite reforms for integration into the single market, namely strong state capacity—including parliament, governments, ministries, judiciary—capable of strong policy-making and transposing extensive and complex *acquis* into domestic legislation and enforcing it domestically. The reason for the absence is simple: EU member states are expected to have mastered these ‘fundamentals’ before joining (Mathernova & Wolczuk, 2020).

Therefore, the AA's implementation has exposed the blind spots and limitations of the *acquis*: it was never designed to stand-alone, comprehensive guide to take a country through the fundamental reforms of the state and economy. As the EU became involved in helping implementation, the lack of capacity became only too apparent, leading the EU to support the wide-ranging reforms, which have been largely separate and in parallel to the AA implementation (see below).

Third, due to the presence of detailed, ready-made legal templates, there has been no search for feasible options for reforms, often referred to a ‘second-best mindset’, as advocated by international development experts (Rodrik, 2008). International experience shows that best-practice legislation and institutions often set the bar too high and reforms that are too ambitious and hence unrealistic often get derailed as a result. In international development there is much more appreciation for going for the ‘second-best scenario’. It transpires those partial reforms, involving adaptation of law to domestic circumstances delivers better and more sustainable results than pursuing ambitious but unrealistic goals. Many

international donors, including the World Bank, recommend developmental assistance to be tailored to particular circumstances and devised for specific problems that need to be tackled, thereby adopting a problem-solving approach, rather than textbook optimal solutions.

Overall, our analysis indicates that the AAs favour the optimal, textbook approach centred on extensive legal approximation. This defines ‘what success looks like’. It also blinds the EU to various problems which are not explicitly covered by the *acquis*, such as deep flaws in the way that the judiciary functions, lack of administrative capacity or systemic corruption. Instead ‘downloading’ the *acquis* becomes a sui generis benchmark of progress, namely legal approximation became equated with successful reforms. The AA countries have developed various scoreboards to measure their progress in implementation, while major challenges such as weak state capacity remained a significant impediment to the implementation.

5 EU’S FLANKING MEASURES TO SUPPORT ‘FUNDAMENTAL REFORMS’ IN UKRAINE

In recognition of the gulf between extensive AA/DCFTA commitments and the limited capacity of Ukraine, the EU came up with some flanking measures—namely providing substantial assistance to enhance state capacity in Ukraine (Wolczuk & Zeruolis, 2018). State capacity refers to the state’s institutional capability to design and carry out a range of public policies that deliver benefits and services to the public and economic actors. The EU engaged in addressing de facto the blind spots of the AA by providing a strong impetus for public administration reforms alongside more sector-oriented reform strategies and helping build capacity within the government. Therefore, the AA/DCFTA implementation prompted the EU to support broader reforms under the banner of European integration rather than the narrowly defined AA implementation.

As a result, the EU engaged in a two-track approach: the AA/DCFTA implementation proceeded in parallel with the so-called ‘fundamental reforms’, including public administration reform (PAR), decentralisation, public finance management reforms, anti-corruption and judicial reforms (see Lough & Dubrovskiy, 2019).

PAR became one of the pivotal dimensions of Ukraine’s European integration and, undoubtedly, strengthened Ukraine’s resilience in the

face of Russia's aggression. For example, the EU supported the comprehensive PAR, which started with the adoption of the new law 'On Civil Service' which came into force in 2016, accompanied by a comprehensive Public Administration Reform Strategy (PARS) for 2016–2020 and a memorandum in support of comprehensive PAR in Ukraine signed by the European Commission and Ukraine. As PAR takes a long time to implement, the EU also engaged in several important innovations to spearhead reforms within the government (see Box 1).

Box 1—EU's Innovative Support for Public Administration Reforms in Ukraine (2014–21) To promote PAR, the EU—working with other international donors—provided innovative support as evidenced in four initiatives. First, the EU has provided funding for the Strategic Group of Advisers (SAGSUR), which advised the Prime Minister of Ukraine on strategic key reforms, including pensions and health services.

Second, the Reform Delivery Office (RDO), which was working with the Prime Minister's office, acts as an advisory body to the Cabinet of Ministers. The team was particularly focused on the implementation of Ukraine's public administration reform. The RDO prepared the strategic governmental plan such as the Mid-term Plan of Reform Priorities for 2017–2020.

Third, Reform Support Teams (RST) were created in several ministries. The RST had a dual role, first, to implement the public administration reform strategies in their respective ministries and, second, to design, develop and implement relevant sectoral reforms. One of the lessons learnt was that a need to systematic reforms needs to avoid limited, random interventions and instead utilise a strategic, sectoral approach.

Fourth, and arguably the most important innovation, was the creation of reform posts within ten ministries as well as the secretariat of the Cabinet of Ministers. The EU came to support a scheme supporting reform positions in a number of ministries. Ukraine was supported with about €100 million in order to recruits up to 2000 civil servants in an independent process by 2020 (Wolczuk, 2019).

In a similar vein, in 2015 the EU launched a large-scale support measure, the ‘U-LEAD with Europe: Ukraine Local Empowerment, Accountability and Development Programme’. With a budget of €102 million, this programme supported Ukrainian decentralisation: reforms to strengthen regional and local governance structures in Ukraine. In particular, U-LEAD covered capacity building and support to the amalgamation process for local authorities and enhancement of administration and service delivery at local, regional and central levels (Mathernova, 2019).

Overall, strengthening state capacity has taken a variety of forms and was strongly supported by the EU in order to enable Ukraine to implement the AA/DCFTA. The EU went well beyond the narrowly defined implementation of the AA/DCFTA. Indeed, it focused on the fundamental preconditions for the implementation in terms of building state capacity.

As a result, after 2014 the EU’s assistance to Ukraine became both more systematic and system-focused in that it sought to strengthen the state’s capacity to implement reform rather than merely facilitate legal approximation. The EU was able to deploy a mix of instruments, with clear conditionality and accompanying policy dialogue, as well as coordinate strategically with member states and other donors. This hybrid approach is not in itself a particular innovation—it has been done elsewhere inside the EU—but its application to the challenges of reform in Ukraine represents a step change (Mathernova, 2019).

From that point of view, the AA/DCFTA has provided a powerful stimulus for EU and Ukrainian officials to focus on tackling long-standing weaknesses and challenges rather than the narrowly defined, *acquis*-centred implementation of the AA/DCFTA. In that respect, the agreement indeed prompted *deeper and comprehensive* ties and assistance.

6 RECONSTRUCTION

Reconstruction has become a priority and a formidable challenge for Ukraine and the international community as a result of Russia’s war in Ukraine. This task needs to be combined with a framework for systematic modernisation and integration. Yet, the war and resulting destruction amplify even more the challenges of coordinating simultaneous integration, modernisation and reconstruction. Over the last decade, the EU

has accumulated direct experience in coordinating international assistance and cooperating closely with the Ukrainian government. This experience can be harnessed, and it is important to ensure full synchronisation between reconstruction and Ukraine's integration with the EU. For example, rebuilding energy-generating plants—which may be undertaken by various international donors—needs to be done in line with EU standards.

Nonetheless, there is an overarching question as to how reconstruction can be managed institutionally. There is no doubt that transparency, clarity and accountability are important principles to guide any reconstruction plans and funding. The EU and Ukraine will need to find a way to coordinate donor activity closely and manage the flow of assistance to Ukraine. This is a formidable task, given the complexity and divergence of donors' priorities, timelines and funding conditionality and monitoring. This will need to be done while Ukraine prioritises urgent needs over strategic, longer-term modernisation. Ukraine's ongoing economic and trade integration with the EU is premised on creating the necessary infrastructure. This ranges from transportation hubs, energy-related such as new high-voltage lines to the cyber-security of Ukraine's energy infrastructure.

In terms of economic recovery, the decision to suspend import duties on all Ukrainian exports to the EU represented a gesture of support by the EU in 2022. Given that thanks to the AA/DCFTA, most of Ukraine's tariffs have been eliminated, except for some transitional periods, tariff-rate quotas and anti-dumping duties. The suspension needs to be extended for a longer period to make a tangible difference to Ukraine, especially given the contraction of its production and exports due to Russia's occupation of Ukraine's territory.

Yet, like the support for fundamental reforms, reconstruction is a flanking measure, which is not addressed and supported by the AA/DCFTA. It requires a separate legal basis, coordination mechanism and implementation procedure.

7 CONCLUSIONS

In developing the AA/DCFTA, the EU responded to Ukraine's demands for closer integration. In doing so, it developed a novel legal instrument, albeit one defined by strong asymmetry centred on the download of the EU *acquis* and extensive conditionality to protect the integrity of its single

market while deflecting Ukraine's membership aspirations (Dragneva & Wolczuk, 2015).

As argued here, the AA embodied a set of assumptions and blind spots, which posed important questions as to its ability to foster a comprehensive modernisation process. Despite the fact that legislative approximation took place implementing many of Ukraine's commitments under the Agreement, it soon became clear that there was a serious expectations gap not only because of the lacking political *finalité* in the form of a membership perspective but also, critically, because of limitations in capacity to implement the AA/DCFTA *acquis*-centred formula. While the experimental nature of the AAs was not necessarily admitted by many, the EU found itself pushed to develop a stream of complementary measures in order to assist Ukraine in developing the capacity to pursue European integration.

With the full-scale Russian invasion of 2022, the context of EU-Ukraine relations changed profoundly. With EU membership now on the table, the pressing question has turned to the process of accession and its complexities. Ironically, in this context, the regulation-heavy AA/DCFTA has acquired a new significance and relevance. Ukraine's exposure to the *acquis* and progress in adopting it has strengthened its case as a candidate country (Delcour & Wolczuk, 2023; Emerson & Blockmans, 2023; Youngs, 2022).

Furthermore, the AA may well prove fit to help structure relations during what might be a potentially long pre-accession process (Van der Loo & Van Elsuwege, 2022; Van Elsuwege, 2025). Nonetheless, given its premises, it should not in itself be viewed as the miracle cure to deliver comprehensive modernisation, let alone large-scale reconstruction. The final verdict on the AA/DCFTA and its ultimate usefulness in the EU's portfolio of foreign policy tools will depend on whether the EU is able to back up the legal content with the political vision in the next stage of relations, namely the accession process.

REFERENCES

- Blockmans, S. (2017). *The obsolescence of the European Neighbourhood Policy*. CEPS. <https://www.ceps.eu/ceps-publications/obsolescence-european-neighbourhood-policy>
- Council of the EU. (2007). *Press Release*. http://europa.eu/rapid/press-release_PRES-07-7_en.htm?locale=en

- Cremona, M. (2009). The European Neighbourhood Policy as a framework for modernisation. In F. Maiani, R. Petrov, and E. Mouliarova. (Eds.). *European integration without membership: Models, experiences, perspectives. EUI Working Papers 2009/10*.
- Cremona, M. (2010). The Single Market as a global export brand: Exporting the Single Market. *European Business Law Review*, 21(5), 663–680.
- Dodini, M., & Fantini, M. (2006). The EU Neighbourhood Policy: Implications for economic growth and stability. *Journal of Common Market Studies*, 44(3), 507–532. <https://doi.org/10.1111/j.1468-5965.2006.00633.x>
- Dragneva, R., & Wolczuk, K. (2015). Ukraine Between the EU and Russia: The integration challenge. *Palgrave Macmillan*. <https://doi.org/10.1111/jcms.12567>
- Duleba, A., Ben, V. & Bilčík, V. (2012). *Policy impact of the Eastern Partnership on Ukraine: Trade, energy, and visa dialogue*. Bratislava, Research Centre of the Slovak Foreign Policy Association.
- Emerson, M. & Blockmans, S. (2023). *The impressive EU-Ukraine summits – Alongside the inadequate enlargement methodology*. SCEEUS Guest Commentary No. 9, 10 February 2023.
- European Commission. (2003). *Wider Europe – Neighbourhood: A new framework for relations with our Eastern and Southern Neighbours*. COM(2003) 104 final. [https://aei.pitt.edu/38141/1/com_\(2003\)_104.pdf](https://aei.pitt.edu/38141/1/com_(2003)_104.pdf)
- European Commission (2006). Commission of the European Communities. Global Europe: Competing in the world. COM(2006) 567 final. <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2006:0567:FIN:en:PDF>
- European Union (2013). *Joint Statement by High Representative Catherine Ashton and Commissioner Štefan Füle on completion of negotiations on the future Association Agreement with Armenia*. Brussels. https://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/138404.pdf
- Grabbe, H. (2003). Europeanization goes East: Power and uncertainty in the EU accession process. In Featherstone, K. and Radaelli, C. (Eds.) *The politics of Europeanization* (pp. 330–338). Oxford University Press. <https://doi.org/10.1093/0199252092.003.0013>
- Hillion, C. (2005). *The evolving system of EU external relations as evidenced in the EU partnerships with Russia and Ukraine*. PhD dissertation, Leiden.
- Hoekman, B. (2011). North-South Preferential Trade Agreements. In J-P. Chauffour and J-C. Maur. (Eds). *Preferential Trade Agreement policies for development: A Handbook*. World Bank. <https://documents1.worldbank.org/curated/en/493761468336840921/pdf/634040PUB0Pref00Box0361517B0PUBLIC0.pdf>
- Hoekman, B. (2007). Regionalism and development: The European Neighbourhood Policy and integration la carte. *Journal of International Trade and Diplomacy*, 1(1), 1–55.

- Horn, H., Mavroidis, P. and Sapir, A. (2009). Beyond the WTO? An anatomy of EU and US Preferential Trade Agreements. SSRN. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1433913
- Koutrakos, P. (2015) *EU international relations law*. Hart Publishing. ISBN9781782258957
- Langbein, J., & Wolczuk, K. (2011). Convergence without membership? The impact of the European Union in the Neighbourhood: Evidence from Ukraine. *Journal of European Public Policy*, 19(6), 863–881. <https://doi.org/10.1080/13501763.2011.614133>
- Lazowski, A. (2008). Enhanced multilateralism and enhanced bilateralism: Integration without membership in the European Union. *Common Market Law Review*, 45, 1433–1458.
- Lightfoot, S., Szent-Iványi, B., & Wolczuk, K. (2016). Mesmerized by enlargement: The EU’s Eastern Neighbourhood Policy and new member state transition experience. *East European Politics & Societies*, 30(3), 664–684. <https://doi.org/10.1177/0888325416632041>
- Lough, J. & Dubovyk, V. (2019). Are Ukraine’s anti-corruption reforms working? *Research Paper, Chatham House, Russia and Eurasia Programme*. <https://www.chathamhouse.org/sites/default/files/2021-04/2018-11-19-are-ukraine-anticorruption-reforms-working-lough.pdf>
- Magen, A. (2007). The *Acquis Communautaire* as an instrument of EU external influence. *European Journal of Law Reform*, 9(3), 361–392.
- Maresceau, M. (2010). Integration oriented elements in bilateral agreements concluded by the EU with third states: a few examples’. On file with the author.
- Mathernova, K. (2019). Ukraine and the European Union. In I. Miklos & P. Kukhta (Eds.), *Reforms in Ukraine after Revolution of Dignity: What was done, why not more and what to do next* (pp. 144–165). Strategic Advisory Group for Support of Ukrainian Reforms.
- Mathernova, K. & Wolczuk, K. (2020, September). The Eastern Partnership: Between fundamentals and integration. *New Eastern Europe*, issue 5. <https://neweasterneurope.eu/2020/09/04/the-eastern-partnership-between-fundamentals-and-integration/>
- Miller, J. (2003). A typology of legal transplants: Using sociology, legal history and Argentine examples to explain the transplant process. *The American Journal of Comparative Law*, 51(4), 839–885. <https://doi.org/10.2307/3649131>
- Rodrik, D. (2008). Second-best institutions. *American Economic Review Papers and Proceedings*, 98(2), 100–104.
- Van der Loo, G., Van Elsuwege, P. & Petrov, R. (2014). The EU-Ukraine Association Agreement: Assessment of an innovative legal instrument. *EUI*

- Department of Law Research Paper No. 2014/09.* <https://cadmus.eui.eu/handle/1814/32031>
- Van der Loo, G. (2016). *The EU-Ukraine Association Agreement and Deep Comprehensive Free Trade Area*. Brill/Nijhoff.
- Van der Loo, G. & Van Elsuwege, P. (2022, 14 March). The EU-Ukraine Association Agreement after Ukraine's EU membership application: Still fit for purpose?. *EPC Policy Paper*. <https://epc.eu/en/Publications/The-EU-Ukraine-Association-Agreement-after-Ukraines-EU-membership-app-46daac>
- Van Elsuwege, P. (2025). Revisiting the EU-Ukraine Association Agreement: A crucial instrument on the road to membership. In M. Rabinovych & A. Pintsch (Eds.) *Ukraine's thorny path to the EU: From "integration without membership" to "integration through war"*. Palgrave Macmillan.
- Van Elsuwege, P., & Van der Loo, G. (2017). Continuity and change in the legal relations between the EU and its neighbours: A result of path dependency and spill-over effects. In D. Bouris & T. Schumacher (Eds.), *The Revised European Neighbourhood Policy* (pp. 97–116). Palgrave Macmillan.
- Van Elsuwege, P. & Chamon, M. (2019). *The meaning of "association" under EU law: A study on the law and practice of EU association agreements*. AFCO Committee, European Parliament. [https://www.europarl.europa.eu/RegData/etudes/STUD/2019/608861/IPOL_STU\(2019\)608861_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2019/608861/IPOL_STU(2019)608861_EN.pdf)
- Van Rompuy, H. (2013). *Remarks at the press conference of the Eastern Partnership summit in Vilnius*. <https://www.consilium.europa.eu/media/25910/139764.pdf>
- Wolczuk, K. (2004). Integration without Europeanisation: Ukraine and its policy towards the EU. *EUI Working Papers, RSCAS No. 2004/15*. <https://cadmus.eui.eu/handle/1814/2757>
- Wolczuk, K. (2016). Ukraine and Europe: Reshuffling the boundaries of order. *Thesis Eleven*, 136(1), 54–73. <https://doi.org/10.1177/0725513616667666>
- Wolczuk, K. (2019). State building and European integration in Ukraine. *Eurasian Geography and Economics*, 60(6), 736–754. <https://doi.org/10.1080/15387216.2019.1655463>
- Wolczuk, K. & Zeruolis, D. (2018, August). Rebuilding Ukraine. An assessment of EU assistance. Chatham House, Russia and Eurasia Programme. <https://www.chathamhouse.org/sites/default/files/publications/research/2018-08-16-rebuilding-ukraine-eu-assistance-wolczuk-zeruolis.pdf>
- Wolczuk, K. & Deltour, L. (2023). *Ukraine and the EU at the time of war: A new paradigm*. Centre for Liberal Modernity. <https://libmod.de/en/ukraine-and-the-eu-at-the-time-of-war-a-new-paradigm/>
- Woolcock, S. (2014). EU policy in Preferential Trade Agreements in the 2000s: A reorientation towards commercial aims. *European Law Journal*, 20(6), 718–732. <https://doi.org/10.1111/eulj.12101>

- Young, A. (2015). Liberalizing trade, not exporting rules: The limits to regulatory coordination in the EU's 'new generation' preferential trade agreements. *Journal of European Public Policy*, 22(9), 1253–1275. <https://doi.org/10.1080/13501763.2015.1046900>
- Young, A., & Peterson, J. (2006). The EU and the new trade politics. *Journal of European Public Policy*, 13(6), 795–814. <https://doi.org/10.1080/13501760600837104>
- Youngs, R. (2022). *Ukraine's EU membership and the geostrategy of democratic self-preservation*. Carnegie Europe. <https://carnegieeurope.eu/2022/04/01/ukraine-s-eu-membership-and-geostrategy-of-democratic-self-preservation-pub-86771>

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Revisiting the EU-Ukraine Association Agreement: A Crucial Instrument on the Road to Membership

Peter Van Elsuwege

1 INTRODUCTION

In January 2007, the Council adopted negotiating directives for “an enhanced agreement” between the European Union (EU) and Ukraine (Council of the EU, 2007). Through this agreement, which was part of the broader policy framework of the European Neighbourhood Policy (ENP), the EU and Ukraine envisaged “an increasingly close relationship” based on gradual economic integration and deepened political cooperation. It was already mentioned at that time that “this shall not prejudice any possible future developments in EU-Ukraine relations” (Council of the EU, 2007). The remarkable ambiguity surrounding the name and the substance of the new legal framework for EU-Ukraine relations revealed the lack of consensus amongst the EU member states about the type of relationship the Union should develop with Ukraine (Hillion, 2007, p. 169; Dragneva & Wolczuk, 2025). Even though there is no legal connection between association and accession, the conclusion of association agreements with European countries is often perceived as a

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stepping-stone towards EU membership (Phinnemore, 1999). This may explain why the EU initially proposed the conclusion of a new type of ‘neighbourhood agreement’. From the very start of the negotiations, the Ukrainian authorities opposed against the use of the ‘neighbourhood’ label for the new agreement arguing that Ukraine is a part of Europe and not of the European neighbourhood (Hillion, 2007, p. 170). Only with the adoption of a Joint Declaration on the occasion of the September 2008 EU-Ukraine Summit, it was unequivocally decided that “the new agreement between the European Union and Ukraine will be an association agreement” (EU-Ukraine, 2008).

The explicit reference to ‘association’ did not solve the ambiguity surrounding Ukraine’s long-term membership ambitions. The text of the EU-Ukraine Association Agreement (AA) carefully avoids any direct reference to future membership perspectives for Ukraine and somewhat diplomatically observes that “the European Union acknowledges the European aspirations of Ukraine and welcomes its European choice”. It does not entail any legal or political commitment towards further enlargement on behalf of the Union. The AA is thus not a pre-accession agreement such as the Stabilisation and Association Agreements (SAAs) with the Western Balkan countries, which explicitly refer to the objective of EU membership. It was rather envisaged as a legal instrument for EU integration without membership (Van der Loo, 2016). However, as will be argued in this contribution, this does not imply that the EU-Ukraine AA cannot play a crucial role in Ukraine’s path to membership in the future.

After a brief reflection about the flexible legal nature of association agreements (I) and the key features of the EU-Ukraine AA (II), the role of the AA with respect to three outstanding issues will be highlighted (III). This concerns the process of further trade liberalisation, the movement of persons and the protection of minority rights. Those three areas are not exhaustively dealt with in the EU-Ukraine AA itself. Moreover, they relate to three different policy areas, which all pose distinct challenges in view of Ukraine’s future membership to the EU. First, the process of trade liberalisation relates to the question of market access for Ukrainian agricultural products and the future participation of Ukraine in the EU’s Common Agricultural Policy (CAP). Second, the movement of persons concerns Ukraine’s full integration in the EU internal market and impacts the future status of Ukrainian nationals inside the EU. Third, the protection of minority rights is part of the political conditions for

EU membership. Taken together, the three case studies provide a varied picture of the various challenges on the road to Ukraine's membership of the EU. For each issue, the potential role of the AA will be highlighted, taking into account past experiences, in particular, regarding the Europe Agreements which were concluded with the countries of Central and Eastern Europe (CEECs) before their accession to the EU. This allows to draw conclusions about the remaining significance of the AA as a central legal instrument on the road to Ukraine's EU accession.

2 ASSOCIATION AGREEMENTS AS FLEXIBLE LEGAL INSTRUMENTS: THE RELEVANT EXPERIENCE OF THE EUROPE AGREEMENTS

Association Agreements between the EU and third countries are one of the most important and traditional tools of the EU's external policy. Already in the Treaty of Rome of 1957, it was foreseen that the at that time European Economic Community "may conclude with a third state, a union of states or an international organisation agreements establishing an association involving reciprocal rights and obligations, common action and special procedures".¹ In the history of the European integration process, association agreements have been concluded with a wide number of third countries around the globe. Although all association agreements differ in terms of their exact content and objectives, the common denominator is the ambition to establish a legal and institutional framework for the development of privileged relations involving close political and economic cooperation (Van Elsuwege & Chamon, 2019, p. 48).

While Article 217 TFEU is not explicit on the possible scope and depth of the privileged relation established by an association agreement, the Court of Justice noted that this provision empowers the Union "to guarantee commitments towards non-member countries in all the fields covered by the Treat[ies]".² As a result, the Court draws a parallel between the EU's internal scope of action and the relation it may set up with an associated country or international organisation. This implies that the instrument of association can develop in line with the evolution

¹ Article 238 of the EEC-Treaty (current Article 217 TFEU).

² See Case 12/86, *Demirel*, EU:C:1987:400, para 9. See also Case C-81/13, *UK v. Council*, EU:C:2014:2449, para. 61.

of EU integration itself and with the international context in which the EU operates (Hanf & Dengler, 2005, p. 294).

The privileged relationship established on the basis of an association agreement may take several forms, ranging from little more than a free trade agreement to a level of integration that comes close to membership. As Walter Hallstein, former Commission president, once declared: “association can be anything between full membership minus 1% and a trade and cooperation agreement plus 1%” (Phinnemore, 1999, p. 23). Article 217 TFEU is, in other words, a very flexible instrument allowing for a variety of ties with states interested in a formal relationship with the EU. The actual scope of the association depends on the outcome of the negotiations.

The concept of ‘association’ has been used in various contexts and for different purposes. Originally, there were only two types of association agreements: those preparing a third country for accession to the EU and those supporting the development of former colonies of the member states in the African, Pacific and Caribbean (ACP) region (Gaudissart, 1999, p. 7). In the 1990s this picture changed when Article 217 TFEU was used to establish privileged relations with a diverse group of neighbouring countries, which either did not aspire for EU membership, such as the EFTA states, or did not qualify for membership at all, such as the countries of the Southern Mediterranean. Moreover, the purpose of association may evolve over time. For instance, the Europe Agreements with the CEECs were initiated as an alternative to membership but later became an important vehicle for accession following their political reorientation by the 1993 Copenhagen European Council (Inglis, 2000, p. 173).

After the fall of the Berlin Wall, the European Community offered the prospect of association to the CEECs engaged in economic and political reform (European Commission, 1990). A new generation of association agreements, called ‘Europe Agreements’ (EAs) to mark their political significance, upgraded and replaced the initially concluded trade and economic cooperation agreements. The EAs introduced a political dialogue, provided for the gradual establishment of bilateral free trade areas and formed the basis for economic, cultural and financial cooperation. In addition, they contained provisions on the movement of persons, establishment, supply of services, payments, capital, competition and approximation of laws. Even though all EAs have been replaced by

accession treaties, a brief analysis of this type of agreement is relevant for understanding the mechanism of association.

Significantly, the EAs were initially conceived as alternatives to membership. This explains why the agreements concluded before the 1993 Copenhagen European Council with Poland, Hungary and Czechoslovakia did not have an explicit pre-accession orientation. It was only after the EU's political decision that the associated countries from Central and Eastern Europe could become member states upon fulfilment of political, economic and legal conditions that the EAs became *de facto* instruments for pre-accession. The implementation of the commitments under the EAs became an important indicator of the candidate's readiness for membership. Progress towards the objective of future membership could be discussed within the joint institutions established under the association agreement. In addition, the EAs were complemented with Protocols on conformity assessment.³ The protocols were legally based on Article 133 EC and built upon a provision in the EAs.⁴ They essentially facilitated market access by providing for (i) mutual acceptance of industrial products which fulfilled the requirements to be lawfully produced and sold on the market of one of the Parties and (ii) mutual recognition of the results of conformity assessment of these products subject to Community law and to the equivalent national law.⁵ In other words, it allowed industrial products certified by the notified bodies in either the

³ See, e.g. Protocol to the Europe Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Republic of Latvia, of the other part, on Conformity Assessment and Acceptance of Industrial Products (PECA), OJ (2002) L 202/3. For Lithuania and Estonia, see: OJ (2002), L 202/21 and OJ (2003) L 120/26 respectively.

⁴ Article 75 of the EA with Estonia, Article 76 (2) of the EAs with Latvia and Lithuania provided that cooperation in the fields of standardisation and conformity assessment should seek to achieve the conclusion of agreements on mutual recognition. See: Council Decision on the conclusion of an additional Protocol to the Europe Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Republic of Estonia, of the other part, on conformity assessment and acceptance of industrial products (PECA), OJ (2003) L 120/24. For Latvia and Lithuania: OJ (2002) L 202/1 and OJ (2002) L 202/19 respectively.

⁵ See: Council Decision on the conclusion of an additional Protocol to the Europe Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Republic of Estonia, of the other part, on conformity assessment and acceptance of industrial products. Explanatory Memorandum, COM (2002) 608 final, OJ (2003) C 45E/210.

EU or the associated country to be placed on the market of the other Party without having to undergo further approval procedures. The sectors covered by this arrangement differed from country to country.⁶ In those specific areas, the Protocols on conformity assessment created an enlarged internal market prior to accession. Hence, those protocols became “the major instrument of the pre-accession strategy in the field of the free movement of goods” (Van Elsuwege, 2008, p. 144). The mechanism of concluding protocols to the EAs, therefore, clearly illustrated the transformation of the EAs from mere association agreements into vehicles towards accession.

Remarkably, the political reorientation of the EAs did not result in a formal amendment of the initial text of the agreements to indicate the objective of future membership. Only the EAs with the Baltic States and Slovenia, which were negotiated and signed after the 1993 Copenhagen European Council, included a reference to the “accession preparation strategy”. The latter agreements also included a new title on the prevention of illegal activities. The increased attention to new security threats such as irregular migration, trafficking in drugs, smuggling of nuclear materials and all forms of organised crime explains this evolution. In other words, the material scope of association agreements also depends upon the evolving societal context.

This observation also applies to the EU-Ukraine AA, which has been negotiated in a period following the EU’s eastward enlargement and in the context of an emerging European Neighbourhood Policy. This explains the focus on integration without membership and conditionality in the EU-Ukraine AA. As will be argued later in this contribution, this does not exclude that this agreement becomes a central legal instrument on the road to Ukraine’s EU membership. The experience of the old Europe Agreements and their political reorientation following the 1993 European Council is an important precedent for this evolution.

⁶ The PECA with Estonia included electrical safety, electromagnetic compatibility, lifts, safety of toys; with Latvia electric safety, electromagnetic compatibility, toys and construction products were included and with Lithuania the PECA applied to machinery, lifts, personal protective equipment, electrical safety, electromagnetic compatibility and simple pressure vessels.

3 THE KEY FEATURES OF THE EU-UKRAINE ASSOCIATION AGREEMENT

The EU-Ukraine AA is one of the most ambitious and voluminous amongst all EU association agreements with third countries.⁷ It is a comprehensive framework agreement which embraces the whole spectrum of EU activities, from trade to foreign and security policy and cooperation in justice and home affairs. Of particular significance is the ambition to set up a Deep and Comprehensive Free Trade Area (DCFTA), leading to the gradual and partial integration of Ukraine into the EU internal market. This implies a far-reaching liberalisation of trade in goods and services and the abolition of non-tariff barriers through regulatory convergence with regard to issues such as the protection of intellectual property rights, competition law, rules of origin, labour standards and environmental protection. In order to ensure the effective implementation of those commitments, the AA is based upon a strict conditionality approach. Broadly speaking, two different forms of conditionality can be distinguished. On the one hand, the AA includes several provisions related to Ukraine's commitment to the common values of democracy, rule of law and respect for human rights and fundamental freedoms (Ghazaryan, 2015, p. 391). On the other hand, the part on the DCFTA is based on an explicit 'market access conditionality' implying that additional access to a section of the EU internal market will only be granted if the EU decides, after a strict monitoring procedure, that the legislative approximation commitments are adequately implemented (Van der Loo, Van Elsuwege & Petrov, 2014, p. 13). This form of conditionality is a rather unique feature of this type of association agreements and corresponds to the general approach of the ENP and the Eastern Partnership (EaP).

The AA does not aim at the preparation of Ukraine's accession to the EU but at the establishment of "close and privileged links" (EU-Ukraine, 2014, Article. 1(2)(a)). In other words, the key objective of the AA is to ensure Ukraine's partial integration in the EU without offering any concrete membership perspective. For this purpose, the AA contains so-called 'evolutionary' and 'conditionality' clauses. These are provisions

⁷ The agreement counts around 2,140 pages in the Official Journal including 7 titles, 28 chapters, 486 articles, 44 annexes, 3 protocols and a joint declaration; OJ (2014) 161/3.

with specific objectives (for instance, granting a visa-free regime, access to certain freedoms of the EU internal market), the attainment of which is conditional either on certain actions on behalf of Ukraine (such as the elimination of trade barriers and uncompetitive practices) or the effective functioning of democratic and market-economy standards (such as free and fair elections and fighting corruption). It is well known that such a process raises significant challenges in terms of EU *acquis* export, in particular, regarding the uniform interpretation and application of the shared legal framework within the legal systems of third countries. For this purpose, the AA with Ukraine introduces a reinforced institutional framework, enhanced forms of conditionality and sophisticated mechanisms for legal approximation and dispute settlement which are distinct from other existing models of integration without membership (Van der Loo, 2016).

The preamble to the agreement explicitly states that “political association and economic integration of Ukraine within the European Union will depend on progress in the implementation of the current agreement as well as Ukraine’s track record in ensuring respect for common values, and progress in achieving convergence with the EU in political, economic and legal areas”.⁸ This link between the third country’s performance and the deepening of the EU’s engagement is a key characteristic of the ENP. Whereas this principle had initially been applied on the basis of soft law instruments such as Action Plans and the Association Agenda, it is now encapsulated in a legally binding bilateral agreement. Arguably, this *quid pro quo* approach also perfectly fits within the new context following the recognition of Ukraine’s candidate status for EU membership. Conditionality and progress on the basis of a candidate’s own merits towards meeting the pre-accession criteria is one of the core elements of the EU’s enlargement policy. Hence, the broad and open-ended formulation of the EU-Ukraine AA objectives implies that this instrument can easily be adapted to the new circumstances.

In addition to the general ‘common values’ conditionality, the AA contains a specific form of ‘market access’ conditionality, which is explicitly linked to the process of legislative approximation. Of particular significance is the far-reaching monitoring of Ukraine’s efforts to approximate national legislation to EU law, including aspects of implementation and

⁸ Emphasis added.

enforcement (EU-Ukraine, 2014, Article. 475(2)). To facilitate the assessment process, the government of Ukraine is obliged to provide reports to the EU in line with approximation deadlines specified in the Agreement. In addition to the drafting of progress reports, which is a common practice within the EU's pre-accession strategy, the monitoring procedure may include "on-the-spot missions, with the participation of EU institutions, bodies and agencies, non-governmental bodies, supervisory authorities, independent experts and others as needed" (EU-Ukraine, 2014, Article 475(3)). The latter option is a new and far-reaching instrument introduced precisely to guarantee that legislative approximation goes beyond a formal adaptation of national legislation.

The results of the monitoring activities are to be discussed within the joint bodies established under the AA. Such bodies may adopt recommendations on the basis of unanimity but it is only the Association Council (or the Trade Committee) which shall decide on further market opening if the parties agree that the necessary measures covered within the DCFTA part of the agreement have been implemented and are being enforced.⁹ Significantly, recommendations or decisions of the joint institutional bodies as well as a failure to reach such recommendations or decisions cannot be challenged under the specific DCFTA dispute settlement procedure (EU-Ukraine, 2014, Article 475(6)). In other words, the 'market opening' conditionality is very strict. From a legal point of view, it requires the agreement of both parties to proceed. Of course, in practice, Ukraine will be the requesting party which places the EU in a powerful position to decide on the pace and scope of market opening.

Taking into account the comprehensive nature of the agreement, the underlying conditionality approach and the complex mechanisms for legislative approximation and dispute settlement, the EU-Ukraine AA occupies, together with the Moldova and Georgia AAs, a unique position within the network of bilateral agreements concluded between the EU and third countries. As such, it offers an ambitious agenda for reform which largely coincides with the EU's conditions for membership. The obligation to share the EU's common democratic values based upon regular monitoring by the EU institutions allows for a constant political dialogue on important issues such as respect for the rule of law and

⁹ Art. 475 (5) EU-Ukraine AA Sometimes, the decision about market accession is specifically endowed to the Trade Committee. This is, for instance, the case with regard to services and establishment (Art. 4 Annex XVII) and public procurement (Art. 154).

the fight against corruption. In addition, the establishment of a DCFTA implies a clear-cut commitment to (partial) integration in the EU internal market, which is also one of the core requirements for membership. Accordingly, the AA belongs to the selected group of “integration-oriented agreements”, i.e. agreements including principles, concepts and provisions of EU law which are to be interpreted and applied as if the third State is part of the EU (Maresceau, 2013, p. 151).

4 KEY CHALLENGES ON THE ROAD TO EU MEMBERSHIP: WHAT ROLE FOR THE EU-UKRAINE ASSOCIATION AGREEMENT?

Whereas the EU-Ukraine AA provides a comprehensive framework for the development of EU-Ukraine relations, it does not exhaustively cover all remaining challenges on the road towards EU membership. This is no surprise taking into account the dynamic development of EU law and the different political context since the negotiation of this agreement. Perhaps more importantly, it is also not problematic. The experience of the Europe Agreements with the CEECs illustrates how association agreements can be re-oriented towards instruments of pre-accession without amending the text of the agreements (cf. *supra*). This is mainly due to their flexible nature and strong institutional settings, which allow for the gradual development of the established relationship. At least, the AA provides the general principles and includes key points of reference to tackle issues which are not explicitly foreseen in the agreement itself. This will be illustrated with three examples, which all concern various dimensions of EU-Ukraine relations in preparation of future membership: (i) the development of trade liberalisation beyond the DCFTA; (ii) the movement of persons and (iii) the protection of minorities.

4.1 Trade Liberalisation Beyond the DCFTA: Lessons from the Ukrainian Grain Import Saga

The EU-Ukraine AA includes sophisticated clauses on legislative approximation and trade liberalisation in the part on the establishment of the DCFTA. In several DCFTA chapters, the process of legislative approximation is clearly linked to additional access to the EU internal market. For example, in the area of technical barriers to trade, Ukraine must

“incorporate the relevant EU *acquis*” in line with the timetable set out in Annex III (EU-Ukraine, 2014, Title IV, Chapter 3). It is only when the “EU Party” has determined that Ukraine has fully approximated its legislation to the listed EU *acquis* that additional access to its internal market will be offered in the form of the conclusion of an Agreement on Conformity Assessment and Acceptance of Industrial Products (ACAA) (EU-Ukraine, 2014, Article 57). ACAAs are a specific type of mutual recognition agreements according to which the contracting parties agree that products listed in the ACAA, fulfilling the requirements for being lawfully placed on the market of one party, may be placed on the market of the other party. The negotiation of such an ACAA is a key example of how the AA provides a platform for the further development of EU-Ukraine relations in anticipation of future membership. It opens the door to free movement of goods in industrial products and, as such, implies compliance with an important part of the EU’s internal market *acquis*. Moreover, Article 463 (3) AA allows the Association Council to update and amend the annexes to the agreement in view of the evolutions in EU law and the applicable standards set out in relevant international instruments. This allows for a dynamic adaptation of the commitments and further trade integration.

Nevertheless, there are also areas which are not fully liberalised under the DCFTA provisions of the AA. This includes, amongst others, agricultural products such as cereals, pork, beef, poultry and sugar where tariff-rate quota (TRQ) are still in place. In the wake of Russia’s military aggression against Ukraine, the EU adopted additional trade-liberalising measures including the temporary suspension of all outstanding tariffs for agricultural products. Whereas these measures take the form of ‘autonomous trade measures’ (ATM) introduced under an EU Regulation, the link with the AA is obvious (European Parliament & Council of the EU, 2022; see also Freudlsperger & Schimmelfennig, 2025). The ATM supplement the DCFTA provisions of the AA. Accordingly, they contribute to one of the main objectives of the EU-Ukraine AA, which is to establish conditions for enhanced economic and trade relations leading towards Ukraine’s gradual integration in the EU internal market. Significantly, the adoption of the ATM is explicitly connected to the conditionality approach, which has been established under the AA. The entitlement of additional preferential arrangements requires compliance with the rules of origin of products and the procedures related thereto as foreseen under the AA (economic conditionality) and “Ukraine’s respect

for democratic principles, human rights and fundamental freedoms and respect for the principle of the rule of law as well continued and sustained efforts with regard to the fight against corruption and illegal activities” provided for in Articles 2, 3 and 22 of the Association Agreement (political conditionality) (European Parliament & Council of the EU, 2022).

In order to protect the EU market against undesired disturbances, the Commission monitors the impact of the Regulation. If necessary, safeguard measures such as the re-introduction of customs duties can be adopted and EU member states may request the Commission to investigate the existence of serious difficulties for Union producers. On the initiative of Polish Prime Minister Mateusz Morawiecki, the Prime Ministers of five EU member states bordering Ukraine wrote a joint letter to the European Commission at the end of March 2023. They called, amongst others, for additional EU funding to support their domestic agricultural producers and suggested that “the Commission should approve [their proposed modifications] as soon as possible (as emergency measures)” (Chancellery of the Prime Minister of Poland, 2023). In a first reaction, the European Commission (2023a) acknowledged that further assistance may be necessary, in addition to the first support package worth € 56,3 million which had already been reserved for Bulgarian, Polish and Romanian farmers. However, without waiting for the Commission’s full response, Poland was the first to introduce an immediate import ban on 15 April 2023, followed soon by Hungary and the other concerned EU member states (Notes from Poland, 2023).

Following those controversial member state actions (Van Elsuwege, 2023), the European Commission (2023b) adopted “exceptional and temporary preventive measures” under the safeguard clause foreseen in the ATM Regulation. This brought an end to the unilateral import bans and opened the gates to the renewal of temporary trade liberalisation and other trade concessions. On 15 September 2023, the European Commission announced the expiry of the temporary restrictions on imports of Ukrainian grain and other foodstuff in the EU. In return, Ukraine announced the introduction of an export licencing system to prevent market distortions in the neighbouring EU member states. This pragmatic solution could not prevent the re-introduction of unilateral import bans by Poland, Hungary and the Slovak Republic on certain agricultural products from Ukraine, leading to a Ukrainian request for WTO dispute consultations (World Trade Organisation, 2023; see also Haletska, 2025).

This entire episode illustrates the difficulties regarding the further trade liberalisation of agricultural products. Even though this matter goes beyond the scope of the DCFTA commitments as agreed under the EU-Ukraine AA, the latter provides a relevant point of reference for future developments. In particular, Article 29 (4) AA envisages a consultation between the parties “to consider accelerating and broadening the scope of the elimination of the customs duties on trade between themselves”. For this purpose, the Trade Committee established under Article 465 AA is endowed with a competence to adopt binding decisions regarding the further elimination of customs duties. This is part and parcel of Ukraine’s gradual integration in the EU internal market and, accordingly, of its pre-accession process. Arguably, the adoption of decisions in accordance with articles 29 (4) and 465 AA may provide a more structural solution for the import of Ukrainian agricultural products after the termination of the EU’s autonomous trade measures (Taran, 2023).

Moreover, the Ukrainian grain import saga reveals that future EU accession negotiations on the Common Agricultural Policy (CAP) chapter of the *acquis* promise to be very difficult. If the EU is taking the Ukrainian membership application seriously, this implies that the integration of Ukraine into the CAP is to be prepared carefully. As suggested by Silvia Bender, German State Secretary at the Federal Ministry of Food and Agriculture, a structural reform of the CAP is needed before the start of the next funding period in 2028. The discussions surrounding the import of Ukrainian agricultural products may be a wake-up call to put this issue on the EU’s (enlargement) agenda (Dahm, 2023).

Again, the experience of the EU accession of the CEECs may be relevant. Taking into account the size and the production potential of the agricultural sector in the CEECs, the Commission initiated a major reform of the CAP in 1997, as part of its Agenda 2000. This coincided with the introduction of a special instrument for agricultural pre-accession aid in order to facilitate the candidate countries’ integration into the EU (European Parliament, 1998). Today, this support mechanism still exists under the Instrument for Pre-accession Assistance for Rural Development (IPARD). It is legally based on Regulation 2021/1529 establishing the Instrument for Pre-accession Assistance (IPA III), together with Commission Implementing Regulation 2021/2023 and Commission Delegated Regulation 2021/2128. The beneficiaries are EU candidate countries, which conclude bilateral financial agreements with

the European Commission. Ukraine and Moldova were not listed as beneficiary countries when the IPA III Regulation was adopted. However, their new status following the June 2002 European Council merits an amendment of this legal instrument so that these countries can equally benefit from this support on their road to membership. Significantly, the EU-Ukraine AA provides the proper legal basis for this evolution. Chapter 17 of this agreement is devoted to ‘agriculture and rural development’ and includes an open-ended list of cooperation objectives in this sector (EU-Ukraine, 2014, Article 404). Moreover, Article 405 of the EU-Ukraine AA provides that “the Parties shall support gradual approximation to the relevant EU law and regulatory standards” with respect to agriculture and rural development. A core list of relevant EU legislation is specified in Annex XXXVIII to the agreement. Accordingly, the AA remains the key point of reference for the integration of Ukraine in the EU’s agricultural sector and for its inclusion in the EU’s pre-accession assistance.

4.2 *Movement of Persons: What After the Temporary Protection Status?*

The AA does not provide for free movement of persons and only includes a modest section on mobility of workers, which is nothing more than a stand-still provision (EU-Ukraine, 2014, Article 18). This implies that the member states’ facilities of access to employment for Ukrainian workers as they existed at the time of the entry into force of the AA cannot be reversed. In addition, the Association Council has the competence to examine the possibilities for the granting of more favourable conditions in the future. In general, however, the AA does not include specific rules on the movement of persons apart from a cross-reference to the visa-liberalisation process, which was subject to a separate procedure. From a legal point of view, the abolishment of the visa requirement is based on the amendment of the EU visa Regulation (European Parliament & Council of the EU, 2017). Taking into account the migratory and security situation in the EU, the actual introduction of the visa-free regime for Georgian and Ukrainian nationals in 2017 coincided with a strengthening of the suspension mechanism. Accordingly, a (temporary) suspension of the visa waiver can be introduced if third countries no longer fulfil the criteria which were the basis for granting visa-free status. As a result, the

conditionality approach of the AA is also applicable with respect to the visa-free regime.

The start of Russia's war against Ukraine tremendously changed the legal framework regarding the movement of persons between the EU and Ukraine. On 2 March 2022, the European Commission proposed the activation of the Temporary Protection Directive (TPD) to offer quick and effective assistance to people fleeing the war in Ukraine. Two days later, the Council already adopted the required implementing decision which entered into force on the same day (Council of the EU, 2022). As a result, these people are given a residence permit and have access to education, medical care, housing, the labour market and social welfare assistance (see Lazarenko & Rabinovych, 2025). This first-ever activation of the TPD achieved positive results, in the sense that it avoided extreme pressure on the national asylum systems of the member states while offering a quick solution to people in need of protection (European Commission (EC), 2023c). The Council extended the temporary protection on an annual basis (Council of the EU, 2024).

Nevertheless, taking into account that Article 4 of the TPD foresees that temporary protection regimes cannot continue for ever, a more sustainable approach to the question of (free) movement of persons is at stake. This is particularly relevant in light of Ukraine's EU membership perspectives and the EU member states' traditional reluctance to immediately offer free movement rights. All recent enlargement waves included relatively long and sophisticated transitional arrangements and safeguard clauses in this domain.¹⁰

The long-term situation of Ukrainian nationals benefitting from the temporary protection status remains ambiguous and largely depends upon the outcome of the war. In the best scenario, a situation where the Russian invasion ends in the near future, most Ukrainian nationals will be expected to return to Ukraine. In the pessimistic scenario that the war continues or the situation in Ukraine remains too dangerous and unstable, a request for international protection under the normal asylum procedures may bring

¹⁰ For instance, for the accession of the CEECs as well as Croatia, a flexible 2 + 3 + 2 transitional period was included in the respective Treaties of accession. This allowed the member states to keep restrictions on access to their labour markets for at least two years, with a possible extension to maximum seven years following notifications to the Commission.

a solution. Alternative options, such as the creation of a new reconstruction permit for temporary protection beneficiaries from Ukraine (Asscher, 2023) or an amendment of the EU long-term residence (LTR) directive have been proposed to solve the potential deadlock (International Centre for Migration Policy Development, 2023; Meijers Committee, 2023).

Whatever scenario or solution is envisaged, it appears that the rules regarding the movement of persons under the EU-Ukraine AA need to be strengthened. In this respect, the opportunities offered under Article 18(2) AA may be used to establish a common framework for the integration of Ukrainian nationals in the labour markets of EU member states. This provision allows the Association Council to examine the granting of more favourable conditions to Ukrainian workers, including facilities for access to professional training, in accordance with laws, conditions and procedures in force in the member states and in the EU. This may be regarded as an open-ended and broadly drafted provision, which may serve as a legal basis for the introduction of new initiatives in anticipation of Ukraine's EU membership. One could think about the adoption of Association Council decisions regulating the status of Ukrainian nationals in EU member states after the end of the temporary protection, which is granted following the outbreak of the war. Inspiration may be drawn from the experience of the EU-Turkey Association Agreement. The latter envisages the progressive introduction of free movement of workers between the parties.¹¹ Whereas this ambitious objective has not yet materialised, several decisions of the EU-Turkey Association Council developed the status of Turkish workers and their family members with respect to residence rights and social benefits. As confirmed by the Court of Justice in its abundant case law regarding the EU-Turkey Association Agreement and its implementing measures, decisions of the Association Council may qualify for direct effect in the EU legal order when the relevant provisions are drafted in clear, precise and unconditional terms (Groenendijk, 2015, p. 39).¹² This highlights how the adoption of such decisions may be instrumental to further define the legal position of Ukrainian nationals in the EU legal order, in anticipation of its future membership and the full application of free movement rights within the EU internal market.

¹¹ Art. 12 of the EU-Turkey AA.

¹² See: Case C-192/89, *Sevince v. Staatssecretaris van Justitie*, EU:C:1990:322, para. 19.

4.3 *The Protection of Minorities: Lessons from the Baltic States' Experience*

One of the most sensitive political conditions for EU membership concerns the protection of minority rights. This is an area where the EU's *acquis* is fairly limited. The EU rules on minority protection are largely confined to anti-discrimination measures, mainly due to a lack of competence to pursue a more comprehensive minority protection policy at the EU level. The result is a gap between the EU's internal standards on minority protection and the external standards which are set for EU candidate countries (Hillion, 2003, p. 715). In the framework of the EU's enlargement policy, for instance, the Council of Europe Framework Convention for the Protection of National Minorities (FCNM) is used as an external benchmark, whereas several EU member states did not yet ratify this convention.¹³ This well-known discrepancy is also relevant for Ukraine's EU accession process, in the sense that the FCNM will be a key point of reference for the assessment of its compliance with this condition for membership. This can already be derived from the European Commission's Opinion about Ukraine's membership application, which observed that:

The respect for rights of persons belonging to national minorities in the field of education and language and their representation in elected bodies in all levels of public life needs to be ensured by fully implementing the recommendations of the Council of Europe's Venice Commission on the education law, implementing those on the State language law and taking into account the last monitoring cycle of the Framework Convention on National Minorities. (EC, 2022, p. 13).

The Venice Commission (2017, paras 109–115) issued concerns about the reduction of education in minority languages in Ukraine. In particular, it criticised the envisaged introduction of a more beneficial regime for speakers of English and other official languages of the European Union in comparison to speakers of languages of other minorities (including Russian). The Ukrainian authorities' explanation that the distinction is related to Ukraine's European ambitions and the historic oppression of the Ukrainian language in favour of Russian did

¹³ France did not sign the FCNM; Belgium, Greece and Luxembourg signed but did not ratify the FCNM, see: < <https://www.coe.int/en/web/minorities/etats-partie> > .

not convince the Venice Commission about the necessity and proportionality of the proposed measures (Venice Commission, 2019, para 44). In this respect, it is noteworthy that the Venice Commission came to another conclusion in its report regarding amendments to the Legislation on Education in Minority Languages of Latvia. In particular, the Venice Commission (2020) found that a more preferential treatment for official EU languages is justified in an EU member state, such as Latvia, in order to facilitate the Latvian citizen's rights to free movement within the EU.¹⁴ The Venice Commission also expressly pointed at the differences with the situation of Ukraine, which is not an EU member state. Moreover, the status of Russian under the Ukrainian constitution is different in comparison to that of Latvia. Significantly, in its 2023 Opinion on the Ukrainian Law on National Minorities, the Venice Commission found that the granting of the EU candidate status to Ukraine did not change this conclusion. However, it also noted that “due to the brutal aggression of the Russian Federation against Ukraine, it would be justified to provide for a transitional period during martial law where this privileged status would not be given to the Russian language” (Venice Commission, 2023a, 2023b, para 41).

Taken together, the reports of the Venice Commission provide the background for a broader discussion about the protection of minorities as a condition for Ukraine's future EU membership. This discussion may take place within the context of the political dialogue as established under the Association Agreement. Article 4, para 2 (e) AA explicitly refers to the strengthening of human rights and fundamental freedoms, including the rights of persons belonging to national minorities, as one of the objectives of this dialogue. The fora for the conduct of this political dialogue

¹⁴ See, in this respect, also the recent case law of the Court of Justice of the EU (CJEU) and the European Court of Human Rights (ECtHR). In the case of *Boris Cilevičs and others* (C-391/20), the CJEU found the Latvian legislation requiring institutions of higher education to promote and develop the national official language to be in compliance with EU law. In *Valiullina and others v. Latvia* (application Nrs. 56,928/19, 7306/20 and 11,927/20) the ECtHR ruled that legislative amendments which reduced the use of Russian as the language of instruction in Latvian public schools did not violate the European Convention of Human Rights and Fundamental Freedoms. Amongst others, the ECtHR referred to the historical context where the use of Latvian had been significantly restricted during fifty years of unlawful occupation and annexation of Latvia by the Soviet regime as a consideration to conclude that the protection of Latvian as the only official State language of the country pursued a legitimate aim.

are broadly defined in Article 5 AA and include, amongst others, a reference to the role of the Organisation for Security and Cooperation in Europe (OSCE). The latter organisation and its High Commissioner on National Minorities, in particular, played an important role in the EU pre-accession process of Estonia and Latvia. For instance, recommendations of the OSCE High Commissioner affected the gradual evolution of Estonia's and Latvia's language legislation (Van Elsuwege, 2008, pp. 275–288). Even though the challenges are not identical, due to the specific situation of the Baltic States' restoration of independence under international law, this experience nevertheless may be useful for the situation of Ukraine. At least, the EU-Ukraine AA provides ample opportunities for dialogue and monitoring in relation to the issue of minority protection.

5 CONCLUSIONS

This contribution revisited the EU-Ukraine AA in order to assess its role in the process of Ukraine's application for EU membership. This agreement has been negotiated against the background of the unfolding ENP. As a result, it remains silent about any membership perspectives and envisages a form of integration without membership on the basis of a strict political and internal market conditionality approach. Nevertheless, this does not undermine the significance of the AA as a crucial instrument on the road towards Ukraine's future EU membership. This is due to the following reasons.

First, by its very nature, the AA is a comprehensive framework agreement which allows for the dynamic development of EU-Ukraine relations. In particular, the competences endowed to the joint institutions established under the AA allow for the adoption of complementary instruments such as the Agreement on Conformity Assessment or the adoption of legally binding decisions defining the status of Ukrainian nationals on the EU labour market. Moreover, the broadly defined political dialogue could be helpful in tackling the sensitive question of minority protection.

Second, the reorientation of an association agreement from an alternative to membership into a pre-accession instrument is not new. This also happened with the first generation of Europe Agreements concluded with the CEECs. In comparison to the EU-Ukraine AA, the latter was even less developed in terms of scope and ambition. For instance, the agreement with Ukraine includes more sophisticated provisions on legislative approximation, with detailed annexes defining the core EU rules and standards.

The Association Council has the competence to adapt those annexes in light of the evolving EU *acquis* and the new context following Ukraine's recognition as a candidate for membership.

Third, even in those areas which are not explicitly covered under the EU-Ukraine AA, the latter plays a role as an important point of reference. This has been illustrated on the basis of three case studies (liberalisation of trade in agricultural products, rules on movement of persons and protection of minority rights). In all areas, which cover distinct challenges on the road to Ukraine's future EU membership, it has been illustrated how the AA remains relevant. With respect to trade in agricultural products, the open-ended clauses on cooperation and legal approximation defined in Chapter 17 and Annex XXVIII serve as the basis for Ukraine's integration in the CAP. This may coincide with increased pre-accession assistance under the Instrument for Pre-Accession Assistance for Rural Development. As far as the movement of persons is concerned, the extension of the temporary protection regime may coincide with Association Council decisions regarding the residence and social security rights of Ukrainian workers and their families. For the question of minority protection, the political dialogue established under the AA may be instrumental to discuss the implications of ongoing reforms—amongst others in the education sector—to ensure their compliance with the standards set through the case law of the CJEU, the ECtHR and the Venice Commission of the Council of Europe. Taken together, these examples illustrate that even without a formal amendment to the text of the AA, this legal instrument is of crucial significance in the process leading to Ukraine's accession to the EU. It constitutes the core point of reference, which can be supplemented with tailored sectoral pre-accession instruments and initiatives.

REFERENCES

- Asscher, L. (2023). Integration of people fleeing from Ukraine in the EU. Note to the Commission, Retrieved 29 March 2024 from <https://ec.europa.eu/social/BlobServlet?docId=26894&langId=ene>
- Chancellery of the Prime Minister of Poland. (2023), Joint letter on Ukrainian imports and the EU Internal Market. <https://www.gov.pl/web/premier/wspolny-list-bulgarii-wegier-polski-rumunii-i-slowacji-w-sprawie-srodkow-przeciwdzialajacych-negatywnym-skutkom-zwiekszonego-przywozu-produktow-rolnych-z-ukrainy-na-rynek-ue>

- Council of the EU. (2007). Directives for the negotiation of a new Enhanced Agreement between the EU and Ukraine, doc. 5463/07, 22 January 2007.
- Council of the EU. (2022). Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection, OJ (2022) L 71/1.
- Council of the EU. (2024). Implementing Decision (EU) 2024/1836 of 25 June 2024 extending temporary protection as introduced by Implementing Decision (EU) 2022/382, OJ (2024) L 1836.
- Dahm, J. (2023). Germany wants EU to prepare farm funds for enlargement. <https://www.euractiv.com/section/agriculture-food/news/germany-wants-eu-to-prepare-farm-funds-for-enlargement/>
- Dragneva, R., & Wolczuk, K. (2025). Integration and modernisation: EU's Association Agreement with Ukraine. In M. Rabinovych & A. Pintsch (Eds.) *Ukraine's thorny path to the EU: From "integration without membership" to "integration through war"*. Palgrave Macmillan.
- European Commission. (1990). Association agreements with the countries of Central and Eastern Europe: A general outline. COM (90) 398 final.
- European Parliament. (1998). Agriculture and enlargement. *Briefing No. 27*. https://www.europarl.europa.eu/enlargement/briefings/27a2_en.htm
- European Parliament and Council of the EU. (2017). Regulation (EU) 2017/850 of 17 May 2017 amending Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (Ukraine). OJ (2017) L 133/1.
- European Parliament and Council of the EU. (2022). Regulation (EU) 2022/870 of 30 May 2022 on temporary trade-liberalisation measures supplementing trade concessions applicable to Ukrainian products under the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part. OJ (2022) L 152.
- European Commission. (2022). Opinion on Ukraine's application for membership of the European Union. COM (2022) 407 final.
- European Commission. (2023a). Commission presents support measure worth € 56,3 million for Bulgarian, Polish and Romanian farmers. https://agriculture.ec.europa.eu/news/commission-presents-support-measure-worth-eu563-million-bulgarian-polish-and-romanian-farmers-2023-03-20_en#:~:text=Worth%20E2%82%AC56%2C3%20million%20financed%20by%20the%20agricultural%20reserve,imbalances%20on%20their%20planting%20decisions
- European Commission. (2023b). Implementing Regulation (EU) 2023/903 of 2 May 2023 introducing preventive measures concerning certain products originating in Ukraine. OJ (2023) L 114.

- European Commission. (2023c). Temporary protection for those fleeing Russia's war of aggression against Ukraine: One year on. COM (2023) 140 final.
- EU-Ukraine. (2008). EU-Ukraine summit. Doc 12812/08. Retrieved 4 May 2024 from https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/er/102633.pdf
- EU-Ukraine. (2014). Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part. *OJ* (2014), L 161.
- Freudspurger, C., & Schimmelfennig, F. (2025). War and boundary formation: The Russo-Ukrainian war and European integration. In M. Rabinovych & A. Pintsch (Eds.) *Ukraine's thorny path to the EU: From "integration without membership" to "integration through war"*. Palgrave Macmillan.
- Gaudissart, M. A. (1999). Réflexions sur la nature et la portée du concept d'association à la lumière de sa mise en œuvre [Reflections on the nature and scope of the concept of association in light of its implementation]. In M.F. Christophe Tchakaloff (Ed.). *Le concept d'association dans les accords passés par la Communauté : Essai de clarification [The concept of association in agreements made by the Community: Attempt to clarify]*. Bruylant. <https://www.dgsi.pt/bpgr/bpgr.nsf/305fde3cdddf188ab802569660044179b/07d025521fc760e4802568c1004da021?OpenDocument>
- Ghazaryan, N. (2015). A new generation of human rights clauses? The case of Association Agreements in the Eastern Neighbourhood. *European Law Review*, 40(3), 391–410.
- Groenendijk, K. (2015). The Court of Justice and the development of EEC-Turkey association law. In: D. Thym & M. Zoetewij-Turhan (Eds.). *Rights of third-country nationals under EU Association Agreements. Degrees of free movement and citizenship*. Brill-Martinus Nijhoff, 39–61. https://doi.org/10.1163/9789004300064_004
- Haletska, N. (2025). Legal aspects of EU-Ukraine bilateral trade relations during the full-scale war: More trade liberalisation, but under conditions. In M. Rabinovych & A. Pintsch (Eds.) *Ukraine's thorny path to the EU: From "integration without membership" to "integration through war"*. Palgrave Macmillan.
- Hanf, D., & Dengler, P. (2005). Les accords d'association [Association agreements]. In J.-V. Louis & M. Dony (Eds.), *Commentaire Megret: Relations Extérieures [Megret Commentary: External Relations]*. Editions de l'Université de Bruxelles [Editions of the University of Brussels], 1–45.
- Hillion, C. (2003). Enlargement of the European Union. The discrepancy between membership obligations and accession conditions as regards the protection of minorities. *Fordham International Law Journal*, 27(2), 715–740.

- Hillion, C. (2007). Mapping-out the contractual relations between the European Union and its Neighbours: Learning from the EU-Ukraine ‘Enhanced Agreement.’ *European Foreign Affairs Review*, 12(2), 169–182.
- Inglis, K. (2000). The Europe Agreements compared in light of their pre-accession orientation. *Common Market Law Review*, 37(5), 1173–1210.
- International Centre for Migration Policy Development. (2023). Responding to displacement from Ukraine: Options to remain when EU temporary protection ends. *Discussion Paper*. Retrieved 29 March 2024 from https://www.icmpd.org/file/download/59847/file/ICMPD%2520Discussion%2520Paper_Options%2520to%2520remain%2520when%2520EU%2520temporary%2520protection%2520ends.pdf
- Lazarenko, V., & Rabinovych, M. (2025). Collective protection for Ukrainians in the EU: Laws, practices and implications for EU and Ukrainian policies. In M. Rabinovych & A. Pintsch (Eds.) *Ukraine’s thorny path to the EU: From “integration without membership” to “integration through war”*. Palgrave Macmillan.
- Maresceau, M. (2013). Les accords d’intégration dans les relations de proximité de l’Union européenne. [Integration agreements in the proximity relations of the European Union]. In C. Blumann (Ed.). *Les frontières de l’Union européenne. [Border of the European Union]*. Bruylant, 151–192. https://lib.ugent.be/en/catalog/pug01:4284893?i=3&q=%22Claude+Blumann%22&search_field=author
- Meijers Committee. (2023). *Comment on what will happen when the temporary protection scheme for refugees from the War in Ukraine ends*. <https://www.commissie-meijers.nl/wp-content/uploads/2023/07/230714-Meijers-Committee-Comment-on-End-of-Ukraine-Temporary-Protection-Scheme-.pdf>
- Notes from Poland. (2023). Poland introduces immediate ban on Ukrainian agricultural imports. *Notes from Poland*. <https://notesfrompoland.com/2023/04/15/poland-introduces-immediate-ban-on-ukrainian-agricultural-imports/>
- Phinnemore, D. (1999). *Association: Stepping-stone or alternative to EU Membership?* Sheffield Academic Press.
- Taran, S. (2023). EU-Ukraine wartime trade: overcoming difficulties, forging a European path. *European Policy Centre Discussion Paper*. Retrieved 29 March 2025 from https://www.epc.eu/content/PDF/2023/EU-Ukraine_wartime_trade_DP.pdf
- Van der Loo, G., Van Elsuwege, P., & Petrov, R. (2014). The EU-Ukraine Association Agreement: Assessment of an innovative legal instrument. *EU Working Papers Law* 2014/09. <https://cadmus.eui.eu/handle/1814/32031>
- Van der Loo, G. (2016). *The EU-Ukraine Association Agreement and Deep and Comprehensive Free Trade Area. A new legal instrument of integration without membership*. Brill-Martinus Nijhoff.

- Van Elsuwege, P. (2008). *From Soviet republics to EU member states. A legal and political assessment of the Baltic states' accession to the EU*. Brill-Martinus Nijhoff.
- Van Elsuwege, P., & Chamon, M. (2019). The meaning of 'association' under EU law. A study on the law and practice of EU association agreements. *Study for the AFCO Committee of the European Parliament*. [https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU\(2019\)608861](https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2019)608861)
- Van Elsuwege, P. (2023). The Ukrainian grain imports saga. A cynical example of realpolitik. *Verfassungsblog*. <https://verfassungsblog.de/the-ukrainian-grain-imports-saga/>
- Venice Commission. (2017). Opinion No. 902/2017 (Ukraine) on the provision of the law "On Education". CDL_AD52017)030.
- Venice Commission. (2019). Opinion No 960/2019 (Ukraine) on the law "On supporting the functioning of the Ukrainian language as the state language." CDL-AD(2019)032.
- Venice Commission. (2020). Opinion No. 975/2020 (Latvia) on the recent amendments to the legislation "On education in minority languages." CDL-AD(2020)12.
- Venice Commission. (2023) Opinion (Ukraine) "On the Law of National Minorities (Communities)". CDL-AD(2023)021.
- World Trade Organisation. (2023). Ukraine initiates WTO dispute complaints against Hungary, Poland and Slovak Republic, Retrieved September 21, 2023 from https://www.wto.org/english/news_e/news23_e/ds619_620_621rfc_21sep23_e.htm

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Collective Protection for Ukrainians in the EU: Laws, Practices, and Implications for EU and Ukrainian Policies

Valeria Lazarenko and Maryna Rabinovych

1 INTRODUCTION

Russia's full-scale invasion of Ukraine caused, among its multiple repercussions in Ukraine and worldwide, the largest forced migration wave in Europe since the end of World War II. As of March 2024, the number of Ukrainian refugees in Europe is estimated to be 5.982.000 individuals (UN High Commissioner for Refugees (UNHCR) Operational Data Portal, 2024). A vast majority of Ukrainian refugees in Europe stay in the European Union, with Germany (1.139.690 registered individuals) and Poland (956.635 ones) as the most popular destination countries (*Ibid*). The Council of the EU reacted to the mass arrival of Ukrainians by enacting the Temporary Protection Directive (TPD) for the first time in the Union's history (Council of the EU, 2001, 2022). Adopted in the

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aftermath of the Yugoslav Wars in 2001, the TPD represents an exceptional measure to be used in case of a mass influx of displaced persons from outside the EU, when there is a risk that member states' asylum systems will not cope. Under the TPD, EU member states are legally bound to provide beneficiaries of temporary protection (BTPs) with a set of rights specified in the directive (e.g. access to suitable accommodation or housing, access to social welfare). Yet, since the very concept of an EU directive envisages diversity in the ways member states may achieve the goals or standards it sets, domestic implementation practices of the TPD significantly vary across Europe. Alongside the operation of the collective protection regime as such, the variation in member states' practices causes multifaceted implications for EU and Ukrainian policies, especially considering the upcoming negotiations on Ukraine's EU accession.

This chapter thus aims to take stock of the collective protection for Ukrainians in the EU with the focus on the implications differences across the member states have had on EU and Ukrainian policies. In doing so, the chapter relies on the concept of multi-level governance (MLG), most broadly understood as "the dispersion of authority [the competence to make binding decisions that are regarded as legitimate] within and beyond national states" (Hooghe et al., 2020, p. 194). Using this perspective, it will first zoom in on the TPD as the EU-level legal framework for collective protection of Ukrainians. Next, it will dive into the variation of TPD implementation practices at the national and subnational levels, utilising examples from Germany, Poland, the Czech Republic, and Sweden. While all these countries are popular destinations among Ukrainian refugees, they are in various parts of Europe and organise their welfare systems in different ways. Through an MLG-based comparative analysis, the chapter demonstrates three different models of TPD implementation practices and considerable differences between them when it comes to access to suitable accommodation and housing, employment, social welfare or subsistence, and medical care. Such differences can be seen as an immediate and inevitable consequence of the dispersion of authority in the immigration and integration domain across the levels of the EU, and national and subnational levels in the member states, with the subnational level including not just local authorities but non-government organisations (NGOs). In turn, the way member states implement the TPD and ensure Ukrainians' access to rights under the directive, in turn, influences the trajectories and life choices of Ukrainian refugees. For instance, in the second half of 2023, Poland witnessed 'an exodus' of

Ukrainian refugees, as many moved to Germany for higher wages and social benefits (EWL Migration Platform & Centre for East European Studies UW, 2023). Alongside family reasons, difficulties with integrating into societies and job markets of EU member states push many Ukrainian refugees to return (Sologub, 2024). On the other hand, the longer Ukrainians stay abroad and the better integration offers they get, the less likely it becomes that they choose to return to Ukraine, even when the war finishes (Vyshlinsky, et al., 2023).

In combination, both member states' practices and Ukrainian refugees' responses thereto produce multifaceted implications for both the EU and Ukraine's policies. As the war continues, and the TPD is designed to give protection only temporarily for no more than three years, the Union faces the challenge of determining the status of Ukrainians in the EU upon its expiration. This challenge is of particular relevance, as the right to freedom of movement of workers is an essential aspect of Ukraine's prospective EU membership (Van Elsuwege, 2024). At the same time, the Ukrainian government is, however, most interested in returning as many individuals as possible to assist the country's post-war reconstruction and recovery. We conclude that the EU, member states, and Ukraine should cooperate on 'win-win' or 'dual intent' solutions for Ukrainian refugees, offering them both opportunities to integrate abroad and tangible incentives to return to Ukraine. Moreover, both categories of Ukrainians represent an important resource in terms of both EU-Ukraine cooperation on Ukraine's reconstruction and Ukraine's EU accession process.

2 MULTI-LEVEL GOVERNANCE IN THE EU: MIGRATION AND ASYLUM GOVERNANCE

In EU Studies, the concept of multi-level governance (MLG) was originally introduced to capture the dynamics of the EU cohesion policy (Bache et al., 2016). As indicated in the introduction, the basic definition of MLG deals with the dispersion of authority across multiple levels, in the case of the EU, involving the supranational, national, and subnational ones (Hooghe et al., 2020, 194). More broadly, the MLG can be understood as a participatory governance tool that promotes partnership "both vertically between local and regional authorities, national government and the EU, and horizontally between local and regional authorities and civil society" (European Union Committee of the Regions, 2009). In legal

terms, the implementation of the MLG is ensured through the principle of subsidiarity, enshrined in Article 5(3) of the Treaty on the European Union (TEU) and Protocol No 2 on the application of the principles of subsidiarity and proportionality (European Union, 2012). Applicable only to the areas of shared competencies between the EU and member states, the subsidiarity principle aims to “ensure that powers are exercised as close to the citizen as possible, in accordance with the proximity principle referred to in Article 10(3) of the TEU” (European Parliament, 2024). Guided by the subsidiarity principle, the MLG approach emphasises the role of local and regional authorities, private sector, and inhabitants more directly in the governance process. Though engaging with various levels of governance, the MLG thus cannot be viewed as a strictly top-down approach, since it “requires participation and shared responsibility by many stakeholders” (Jauhiainen & Erbsen, 2023, p. 416). Notably, empirical studies of the MLG’s operation in various contexts stress practical difficulties related to the MLG process, in particular, ensuring equitable participation and stakeholder engagement (e.g. Dąbrowski et al., 2014; Hurrellman, 2021).

Difficulties related to various levels’ participation, as well as issue linkage and policy coherence are also pronounced in the studies applying the MLG conceptual lens to address EU migration and asylum governance (e.g. Jauhiainen & Erbsen, 2023; Spencer, 2018). The EU and member states share competencies as to the development of common immigration and asylum policy. At the same time, the nature of these issue areas determines the multiplicity of relations within the MLG system. As indicated in Table 1, such relations include (at least) five facets:

In their study on the implementation of asylum-seeker reception in Italy, Campromori and Ambrosini (2020) point to local policies of reception as “a playing field where different actors come together with different interests, values and frames” (p. 1). Focusing on municipalities’ resistance to the government imposition of asylum seekers’ reception in their areas, the authors highlight the national-regional/local facet as the most problematic in their case (*Ibid*). Similarly, Spencer’s (2018) study on the provision of public services to migrants with irregular status in Europe identifies the national-local facet as particularly problematic, with “socio-economic and individual consequences of exclusion [domination] in shaping local framing of policy responses in contrast to national government priorities” (p. 2034). In contrast to their findings, we argue that, in

Table 1 Stakeholder relations under MLG. Authors' own elaboration, partly based on Jauhiainen & Erbsen, 2023 *Source:*

<i>Type of relations</i>	<i>Scope/examples</i>
Foreign-domestic	<ul style="list-style-type: none"> • EU negotiations with third states on migration- and asylum-related issues (e.g. EU-Turkey negotiations on the redistribution of Syrian refugees) • Developments under the Schengen and Dublin Cooperation systems, influencing both the EU and third states • EU negotiations and cooperation with relevant international organisations (e.g. the UN High Commissioner for Refugees)
Supranational-national	<ul style="list-style-type: none"> • EU-member states' cooperation on the development of migration and asylum policies • Member states' domestic implementation of EU legislation
Supranational-regional / local	Regional and local authorities' input into the development of migration and asylum policies at the EU level (e.g. through the Committee of the Regions)
National-regional/local	<ul style="list-style-type: none"> • Regional and local authorities' and non-government actors' input into the development of domestic migration and asylum policies • Implementation of domestic legislation, often including the development of integration offers to newcomers
Regional-local	Intra-state cooperation between regional and local actors, frequently involving non-government actors

the case of TPD implementation, it has been foremost the supranational-national facet, marked by significant divergencies and, in some cases, also incoherencies in policy implementation, requiring policy responses at various levels. Our research also confirms the earlier finding by Jauhiainen and Erbsen (2023), whereby they point to the top-down policy mismatch between the EU's policy of temporarily hosting and Estonia's national-level integration policy vis-à-vis Ukrainian refugees (p. 428). Given the focus of our argument, the analysis will proceed with an insight into the TPD as a supranational legal framework and the models of its implementation across the member states under study.

3 TPD AS A SUPRANATIONAL LEGAL FRAMEWORK FOR COLLECTIVE PROTECTION IN THE EU

The enactment of the TPD in response to Russia's invasion of Ukraine more than twenty years after the directive's adoption is referred to in scholarship as "paradigm shifting" (Küçük, 2023, p.2). Adopted unanimously by the member states (Council of the EU, 2022), this decision represents an important sign of EU solidarity with Ukraine and its people (Küçük, 2023; Thym, 2022). On a positive note, the decision to activate the TPD helped to save many lives, as well as showcased the EU's capability to cope with large number of refugees (Faro Sarrats, 2023). The case of TPD's activation for Ukraine also continuously demonstrates the importance of granting refugees access to the EU job market, so that they both support themselves and their families and contribute to the EU economy (*Ibid*). At the same time, the granting of temporary protection to Ukrainians triggered the wave of accusations of hypocrisy and 'double standards' against the EU and its member states, as they showed little appetite to enact the TPD in other cases, especially the Syria crisis (e.g. Alsbeti, 2023; Traub, 2022). Indeed, the set of harmonised rights to be guaranteed by EU member states to BTPs under the TPD sets a high standard for the EU refugee regime.

According to the TPD, BTPs in EU member states have the following rights (Council of the EU, 2001):

- a **residence permit** for the entire duration of the protection (which can last from one year to three years);
- appropriate **information on temporary protection**;
- guarantees for access to the **asylum procedure**;
- access to **employment**, subject to rules applicable to the profession and to national labour market policies and general conditions of employment;
- access to suitable **accommodation or housing**;
- access to **social welfare** or means of subsistence if necessary;
- access to **medical care**;
- access to **education** for persons under 18 years to the state education system;
- opportunities for **families to reunite** in certain circumstances;
- access to **banking services**, for instance opening a basic bank account;

- **move to another EU country**, before the issuance of a residence permit;
- **move freely in EU countries** (other than the member state of residence) for 90 days within a 180-day period after a residence permit in the host EU country is issued.

As we explore in the next section, the case of the TPD's activation in response to Russia's invasion of Ukraine demonstrated a variation across countries in terms of services relating to the provision of information, registration, consultation on access to rights, counselling, referrals to accommodation, basic care, documenting biometric data and security screening. Registration period, the amount of social assistance and shelter options including reception centres and private housing also varied among member states.

The last two points of the above list require special attention. Notably, the TPD revived the debate about free choice of the country of destination for persons in need of protection as a smart alternative to the Dublin III system with its 'first safe country principle'¹ (Ovacik, 2022; Thym, 2022). A declaration attached to the Council Implementing Decision (EU) 2022/382 confirms that member states also agreed not to return an individual to a country where he or she was granted temporary protection in case of secondary movements (Council of the EU, 2022). In practical terms, both the initial opportunity to freely choose a country for collective protection and the opportunity to exercise secondary movement helped the member states to both save administrative resources needed for relocation and avoid toxic debates about burden-sharing as in the case of Syria refugee crisis (Thym, 2022).

The list does not include the right to come back to Ukraine. However, in October 2022, Ylva Johansson, EU Commissioner for Home Affairs, stated that the EU's aim is to ensure that Ukrainians can continue to benefit from the TPD, and insisted on the need to support those who decide to go home to Ukraine in their decisions to come back to hosting states (European Commission, 2022). This practice differs from

¹ The main rule under the Dublin III Regulation, involving EU Member States, Iceland, Switzerland, Liechtenstein, and Norway, is that an application for asylum should be processed in the first country participating in the Dublin Regulation an asylum seeker comes to. In case the asylum seeker files an application in another Dublin country, he/she should be sent back to the first country of entry.

the common approach in EU countries when protection holders typically face restrictions on visiting their home country to avoid jeopardising their status. Thus, alongside the ‘free choice’ right and secondary movement opportunities, this exception has been central to the accusations against the EU for its ‘double standards’ policy (e.g. Alsbeti, 2023).

However, the implementation of these exceptions varied among countries. Some of the EU countries did not impose explicit time limits on such trips, but extended stays could impact access to financial aid and housing. In Sweden, for instance, residence permits for displaced Ukrainians were not revoked for short visits to Ukraine. They could leave and return within the permit’s validity, though this might affect their housing and financial support eligibility. However, if their permit remained valid upon return, they could potentially regain support entitlements. Ukrainian citizens receiving temporary protection in Germany have the right to be outside of the country for 90 days within a 180-day period after a residence permit in the host EU country is issued. However, if the person is receiving social benefits, the time outside Germany is limited to 21 working days per year to receive benefits in full. Notifying the local benefits provider of the planned move abroad in advance is thus required. If the person is away for a time period longer than 21 working days per year, the amount of social benefits will be reduced, but not for more than 30%.

Overall, national legislatures in EU member states had to elaborate the mechanisms to implement the provision of the TPD-based rights immediately, as an urgent response to the unfolding migration crisis. Still, researchers and analysts admit the process (even though not always smooth and perfect) went well, and important lessons about crisis response are learnt (Rasche, 2022; Thym, 2022). However, after a couple of months since the temporary protection was implanted as a procedure, the discussion refocused on transitioning from crisis response to a longer-term strategy. This can be confirmed by the case of Estonia with its extensive focus on integrating rather than temporarily hosting Ukrainian refugees (Jauhiainen & Erbsen, 2023). Also in Germany, one of the discussed mechanisms of finding a more sustainable solution was a switch from the concept of protection to the concept of integration of people receiving temporary protection (Laisic, 2022).

The implementation process varied across EU countries impacting Ukrainian refugees’ decision-making on stay or return differently and creating multifaceted implications for the EU and Ukrainian policies.

In the following sections, we will apply the MLG perspective to delve into diverse practices among EU nations, highlighting emblematic policy and attitude discrepancies towards Ukrainian refugee reception. Specifically, we examine the cases of Germany, Poland, the Czech Republic, and Sweden, nations hosting the significant numbers of Ukrainian refugees, representing different models of implementing the TPG.

4 DIFFERENCES IN KEY COUNTRIES AND THEIR IMPACT ON LIFE DECISIONS AND TRAJECTORIES OF UKRAINIAN REFUGEES

From the MLG perspective, differences in procedures for granting and exercising temporary protection for Ukrainian citizens in EU countries are primarily attributable to the supranational-national facet of the system. At the same time, the governance of complex processes like migration and integration, as the research shows, involves more actors than the levels of governing: regional and international organisations, private companies, and even private individuals also play important roles (Geddes, 2022; Geddes et al., 2019; Pachocka et al., 2020). A deeper exploration of the field also shows that interdependencies between the governance models in the countries and the following ways of distribution of money might have specific implications for the migration and integration policies in the countries (Scholten & Penninx, 2016). Various governance models entail different funding mechanisms for key stakeholders such as municipalities, volunteers, and private entities.

The discrepancies were notably visible across various crucial domains of policy implementation, specifically the access to suitable accommodation or housing, and access to employment. The mentioned disparities underscored differing interpretations regarding the imperative and scope of integration measures for Ukrainian refugees.

Despite the fact that the TPD directly guarantees the freedom of movement of protected persons within the EU, settlement procedures were regulated differently in the countries examined. The main difference was whether beneficiaries can settle freely after obtaining a residence permit, and whether self-settlement entails restrictions on assistance or integration measures, with variations observed in the approach to publicly managed settlement, allocation, timing of distribution, and criteria (Lakševics et al., 2024). The mentioned difference was also connected with the financing

model and the level of governance and cost reimbursements between the local, municipal, and national governments. The approach to integration measures for displaced persons from Ukraine also varied considerably from country to country and depended largely on the availability of resources.

Subsequently, we will examine three governance models that have emerged in response to the need for both immediate solutions in implementing TPD and the adaptation of these practices over time to develop more enduring strategies. The cases of Germany, Sweden, Poland, and the Czech Republic will be particularly emblematic in this regard.

5 MODEL I. GERMANY: A NEW ‘MIGRATION REGIME’

The case of Germany is distinctive among other EU countries due to its handling of Ukrainian refugees. The German state has implemented a new ‘migration regime’ (Lazarenko, 2024; Schapendonk et al., 2020), viewing this group of migrants as highly skilled workers with good prospects for integration rather than potential recipients of social benefits in the medium term. The German approach to governing the arrival and integration of Ukrainian refugees can be characterised by replacing humanitarian protection efforts with integration attempts, where the specific ‘migration regime’ applied to Ukrainians guarantees them the same access to the job market, housing, social benefits, healthcare, and education as long-term residents of the country.

Governing. Germany adopted a mainstreaming approach, with immigration responsibilities divided among various ministries and a central role played by the Ministry of the Interior and its Federal Office for Migration and Refugees. However, particular responsibilities (providing access to job market and integration courses, education, etc.) were assigned to multiple ministries. Migration governance was performed on various levels, with regional and local bodies able to introduce specific administrative solutions and practices for migrants and refugees (Schmidtke, 2021). Consequently, despite uniform federal regulations, different priorities, implementations, and practices towards refugees exist in individual federal states (*Länder*) that play a crucial role in immigration and integration policy, acting as co-legislators alongside the federal level. They have autonomy in adopting their integration and refugee admission programmes, although the latter requires federal approval. The *Länder*

also have leeway in implementing national laws and policies, such as residence permits and accommodation arrangements for protection seekers. In the case of Germany, however, the multi-level governance approach appeared to be the most distinctive, as it interacted with the financial aspect of support: budgeting for benefits was the responsibility of different levels, with local governments responsible for payment and subsequent reimbursement procedures from the state level. This resulted in a strict settlement policy for persons under the TPD, who are required to reside in the state of registration if they wish to continue receiving social benefits.

Housing. The right to settle within the country was partially restricted in the case of Germany, with the central government allocating persons under protection to the federal states on the basis of defined distribution criteria. However, exceptions to this rule included the presence of relatives registered in certain areas, confirmed housing, and/or potential employment. After the distribution to the *Länder*, the *Länder* then distribute to the municipalities. However, even under such model, Germany relied on the private housing market with further reimbursements of the cost from the state rather than settling Ukrainian refugees in the municipal housing. Federal funding to the states for increased costs was extended in 2022. However, the amount of money designated for reimbursement was agreed on the federal level, creating an overlap with a housing crisis in the federal states of Berlin, Hamburg, and Bavaria and creating extra complexities for accessing the housing market for the people having their residence status in a particular state (Haase et al., 2023).

Employment. The guaranteed right to employment was granted to Ukrainians under temporary protection automatically upon the granting of such protection, with the aim of integrating them into the labour market as soon as possible. However, this approach had its drawbacks: first and foremost, the challenge of realising the right to work without knowing the language of the host country. Therefore, since the summer of 2022, Germany has been making active efforts to direct Ukrainians to integration courses, shifting the focus from the humanitarian aspect of protection to integration with subsequent access to the labour market. Understandably, this approach has met with mixed reactions among Ukrainians (Lazarenko, 2024), as a huge number of those arrived were clearly seeing their stay under protection as temporary and intended to return to Ukraine as soon as the security situation allowed (Brücker et al., 2022). Displaced persons from Ukraine were exempted

from the usual restrictions on application requirements or temporary employment bans and were granted the right to work upon registration of their application. Germany waived the three-month waiting period for displaced persons from Ukraine to access the labour market and relaxed the regular rules requiring additional employment authorisation from the Federal Employment Agency.

However, the access to employment was directly connected with the integrational efforts: attending language courses combined with an integrational module was compulsory for receiving social benefits on unemployment basis (Arb II). The national government approved and financed integration and language courses offered by private or public providers on the basis of defined criteria. As Hernes et al. (2023) point out, the debates on state-regulated integration are highly relevant, as they relate to both governance and equality issues. Nevertheless, the devolution of responsibility for migrant integration to the local level could jeopardise the principle of equality and lead to different approaches to integration depending on where people settle (Hernes, 2021; Koikkalainen et. al., 2021).

Social Benefits. In the case of Germany, the provision of social assistance varied according to the condition of being able to work. Those who received unemployment benefits also gained access to social assistance to cover living costs, i.e. money/vouchers for rent, food, and personal care items, as well as child and parental benefits and one-off financial support for housing. The person is entitled to receive these benefits for as long as he or she remains enrolled in language courses before becoming employable. Such sustained support, mostly funded by local authorities, contrasts with more limited social support in neighbouring countries and may, therefore, be a factor in the continuing increase in the number of Ukrainians arriving in Germany from other EU countries. Access to social benefits also varied in terms of timing: newly arrived were entitled to immediate assistance calculated to cover basic needs for two months, and the time needed to deal with the bureaucracy involved in obtaining regular social or unemployment benefits.

In Germany, people receiving unemployment benefits are covered by statutory health insurance and are entitled to a range of services, in particular, medical treatment, pregnancy and maternity services, and services for the prevention and early detection of illnesses. Recipients of social assistance are not compulsorily covered by the statutory health insurance

system, but can also obtain health insurance from a statutory health insurance fund, which gives them access to health care services. Refugees from Ukraine who are not in need of assistance and do not receive social benefits have the right to join the statutory health insurance scheme on a voluntary basis.

Germany has made specific efforts to fulfil the rights guaranteed by the TPD for refugees from Ukraine. Procedures were implemented for the first time for non-EU nationals, including a streamlined process for accessing the labour market and assurance of unemployment benefits with subsequent social support during the period required for language learning and job searching. The procedure for refugees protected by the TPD significantly differed from those applied to refugees from other countries without such protection. The German approach has been criticised for its paternalistic logic towards refugees (Chemin & Nagel, 2020). Additionally, it has been blamed for being too welcoming and creating dependency on social benefits, hindering integration (Kinkartz, 2024). The latter argument is often used in discussions about Germany remaining a destination country for Ukrainians who have lost their benefits in other countries and are attempting to prolong their ‘transit’ stay in the EU while awaiting their eventual return to Ukraine. However, there is currently insufficient data to assess the effectiveness of this strategy in facilitating the integration of Ukrainian refugees. German ministries anticipate that at least 50% of Ukrainians will remain in the country in the long term (Brücker et al., 2022).

6 MODEL 2. SWEDEN: THE ‘REFUGEE TRACK’

In 2015, Sweden stood as a unique case, being the sole country to grant permanent residence permits to forced migrants; however, its liberal policies underwent alteration in 2019. Unlike the other Scandinavian countries, Sweden has not enacted specific laws for displaced persons from Ukraine. Instead, they have been incorporated as a target group under the existing Reception of Asylum Seekers Act (LMA) with some minor modifications. This means that individuals who receive collective temporary protection in Sweden retain similar rights to other asylum seekers in Sweden, but do not gain the additional rights that other groups of protected individuals receive upon being granted a residence permit.

Sweden, since 2015, has embraced the principle of providing protection with constrained benefits and a heightened emphasis on local

community involvement. Tyldum et al. (2023) underscore Sweden's minimalist approach, marked by limited economic assistance and integration endeavours, where refugees from Ukraine are granted access solely to benefits available to asylum seekers. This approach encounters fluctuations and instability, attributed to domestic political turmoil, the absence of a clearly articulated strategy and policies, and a desire to avert differential treatment among refugee categories. Refugees from Ukraine in Sweden have analogous rights to asylum seekers, precluding their registration in the Swedish Population Register and the issuance of a personal identity number ("*personnummer*"), a distinction reserved for individuals with refugee or subsidiary protection status in Sweden.

Governing. In Sweden, the integration programme for refugees involves a division of responsibilities between national and municipal levels. The Public Employment Service oversees the overall programme, while municipalities handle housing, language, and civics training after the protection permit is issued. They also provide initial financial aid until state-funded introduction benefits become available, which may take several months. In addition, municipalities provide social care and financial assistance to supplement the introduction benefit, which has remained unchanged since 2010, as it may not cover all expenses. State funding to municipalities is dependent on refugee settlement and integration, which is regionally guided by County Administrative Boards. Displaced persons from Ukraine with temporary protection retain the rights of asylum seekers, overseen by the Migration Agency, with municipalities typically not receiving additional funding. In 2022, municipalities received temporary financial support for expenses related to Ukrainian displaced persons. However, amendments to the Settlement Act in July 2022 now require municipalities to arrange accommodation in accordance with Swedish Migration Agency directives, aligning with prior principles.

Sweden is an example of a 'local turn' in migration governance (Sahin-Mencutek et al., 2022), where responsibilities have been decentralised from the central state to local public-private partnerships and refugees themselves (Kaya & Nagel, 2021). Private operators are also involved in a significant portion of reception activities. This situation aligns with Darling's (2016) concept of subsidiarity. This concept highlights the potential risks associated with increasingly intricate immigration and integration policies. These risks arise due to the co-production of rules and practices, which can result in contradictions among the various actors involved in migration management as an MLG process.

Housing. The settlement principles for displaced persons from Ukraine are the same as those for other groups. This means that they can either arrange their own accommodation or receive public assistance, such as accommodation facilities provided by the Swedish Migration Agency or housing provided by municipalities. In July 2022, the Swedish government implemented municipal housing as an alternative for housing displaced persons from Ukraine. This gave municipalities a greater responsibility for providing housing (Danielsen et al., 2023). According to the distribution criteria outlined in the Settlement Act, the Migration Agency is responsible for assigning displaced persons from Ukraine to municipalities. Once the individual allocations are made, the municipality must arrange accommodation within one month. In 2020, the government introduced a new regulation that limits financial assistance for protection seekers and protection holders who reside in areas listed by the Swedish Migration Agency as having social and economic challenges. This restriction also applies to displaced persons from Ukraine, as previously mentioned.

Hence, in order to receive financial support for housing and daily living costs, individuals granted temporary protection must reside either in housing provided by the board of migration or in municipal areas in Sweden. However, finding housing in such areas can be challenging, particularly for recent arrivals with limited financial resources. Refugees from Ukraine have the option to live in accommodation facilities provided by the Swedish Migration Agency, long-term housing provided by municipalities, or arrange their own accommodation (without financial support).

Private accommodation arrangements can be made through online platforms, and new reception centres have been established. In Sweden, municipalities have a greater responsibility to provide housing for individuals displaced from Ukraine. There are no differences in rights or restrictions before or after protection status is granted.

Social Benefits. The Swedish Migration Agency provides free housing for refugees settling in endorsed municipalities. However, as we will discuss later, only one out of three Ukrainians in Sweden has chosen to settle through the agency and receive complimentary housing (Tyldum et al., 2023). These benefits are only available to refugees who do not have any other means of support. If they secure employment or receive other forms of income, they will lose both the allowance and the entitlement to complimentary housing. Individuals with temporary collective

protection in Sweden are not eligible for social assistance. Therefore, Ukrainians must support themselves either by securing employment or by relying on the minimal benefits designated for asylum seekers. Sweden has implemented a list of “residential areas with significant social and economic challenges” in an effort to discourage newly arrived refugees from settling there (Migrationsverket, 2023). If refugees choose to establish residency in these areas, they will forfeit their entitlement to all benefits, including the minimal benefit designated for asylum seekers.

Tyldum et al. (2023) also highlight the high risk of falling into poverty due to inadequate social support and discuss refugees’ dependence on assistance from non-governmental organisations.

Employment and Integration. In Sweden, refugees under temporary collective protection are entitled to seek employment and may enlist with the Swedish Public Employment Service for job searches. Non-governmental organisations may offer assistance to job seekers, but they are ineligible for support such as employment training or competency validation.

Notably, refugees from Ukraine are not eligible for the 24-month introduction programme in Swedish for immigrants (SFI) or other adult training programmes administered by municipalities. Online community education courses are available through the Swedish Migration Agency as well as free part-time language courses are provided by folk schools, churches, and study associations. Although participation in language and integration courses was voluntary in Sweden, financial support was only provided to those who enrolled in the programme. The Swedish Public Employment Service oversaw integration programmes, while municipalities provided language and civic education.

The refugees from Ukraine are not registered within the population, and therefore, Sweden does not provide specific measures to integrate displaced persons from Ukraine into the labour market (Berlina, 2022; Danielsen et al., 2023). Refugees from Ukraine also have limited options to receive general support measures from the Public Employment Service. The agency requires registration to provide insurance for labour market measures, such as work practice. Therefore, initiatives such as employment training, validation of competencies, work experience, or different programmes provided by the Employment Service are not accessible to them. However, refugees can receive assistance and guidance when applying for jobs. If they meet certain criteria, they may also be eligible

for individual recruitment incentives. It is important to note that insurance is handled by the employer in such cases. Additionally, it is important to avoid biased language such as ‘the evidence suggests’ or ‘the results indicate’.

Healthcare. In the Swedish integration model, which ostensibly relies on municipal responsibility in migration governance, Ukrainian refugees encounter a notable peculiarity that significantly impacts their integration and future prospects in Sweden: limited access to the healthcare system for adults. Persons over the age of 18 are only granted access to emergency medical care, emergency dental care, and other urgent medical care. Other health services, such as abortion and maternal health care, are also available. Displaced persons from Ukraine who are granted asylum in Sweden are entitled to a free health examination. They will also receive a reduced fee for healthcare services upon presentation of their residence permit. Children under the age of 18 will have access to the same healthcare and dental services as Swedish children. This meant that they did not transition to the rights granted to other protected groups and were obliged to become permanent residents of the country (staying there for at least one year) in order to receive medical treatment beyond emergency care. Such an approach led to frequent back-and-forth migration between Sweden and Ukraine, with people returning to receive necessary medical care in Ukraine (Shmulyar Gréen & Odynets, 2024).

Overall, the Swedish model aims to guarantee equal rights for refugees from different countries. However, it also succumbs to the typical shortcomings of migration governance. There is a risk that if a significant number of Ukrainian refugees choose to stay in Sweden for an extended period but face difficulties integrating into the established labour market, it could result in increased inequality or additional pressure on the welfare system, potential de-skilling of the migrants, and a risk of them living in poverty without clear support from the state’s welfare system.

7 MODEL 3. POLAND AND CZECH REPUBLIC: GOVERNANCE AGILITY ON LIMITED RESOURCES

Poland and the Czech Republic, lacking prior experience in managing the mass influx of migrants, exhibited the most variable policies, often due to financial constraints and inadequate funding. In 2015, during the migration crisis, Poland was not a significant destination for migration or the allocation of asylum seekers (Sahin-Mencutek et al., 2022). As

a result, comprehensive local policies for the reception and handling of refugees were not developed, nor were local working practices in this area. Consequently, many of the integration functions were assumed by non-governmental organisations (NGOs). However, these NGOs not only reinforce the Ukrainian community as a cohesive entity but also facilitate the maintenance of ties with Ukraine, ultimately operating with the prospect of return in mind. This scenario underscores a dynamic interplay between governmental limitations, the adaptive role of NGOs, and the overarching aspiration for sustained community engagement and potential repatriation. Nevertheless, even though these countries were able to offer an effective short-term solution in welcoming Ukrainian war migrants, the long-term solution was not that favourable (Golebiowska et al., 2024).

Błaszczuk et al. (2023) argue for the concept of ‘agility’ as a framework for analysing fluctuating migration governance policies, using Poland and the Czech Republic as case studies. Agility is defined as the ability to respond and adapt to change, particularly in terms of organisational expertise, internal flexibility, and managerial competence. Błaszczuk et al. highlight the key role of agility in managing the issue of reception, particularly in the situation of unpreparedness to cope with the wave of war migrants. However, it is important to note that ad hoc solutions may be necessary to deal with potential crises rather than relying solely on the quality of the existing system.

Governing. Similar to Germany, Poland splitted responsibilities between the Ministry of Interior and the Ministry of Foreign Affairs. Both countries have established positions or specialised members of government to oversee migration- and integration-related matters, with Poland maintaining integration within a single ministry, while also appointing a Minister without portfolio for social integration. Regional authorities typically handle aspects of immigration and integration, primarily focusing on implementation.

In Poland, regional authorities (Voievods) oversee Foreigners Affairs Departments and allocate national funding to local *Powiat* Family Support Centres for integration programmes. Migration, primarily a national or state-level responsibility, often sees national agencies or states handling service provision. Before 2022, local authorities in Poland had no formal role in immigration policies, but they became heavily involved due to the influx of displaced persons from Ukraine.

However, the Czech Republic did not delegate such responsibilities to the regional level concerning immigration and reception. As noted by Jelinkova (2023), migrant integration is not receiving sufficient attention from the Czech state, which has prompted civil society to take significant initiative. Despite growing involvement from various actors, including some state institutions, there are still challenges. Although expertise and resources have been accumulated, and efforts to support regional activities are evident, defined visions are often abandoned, and planned tasks remain incomplete. At the local level, gradual progress is observed, with most municipalities offering reactive integration efforts rather than proactive ones. Regional authorities' involvement remains largely dependent on individual initiatives rather than systematic policy integration, except for major cities like Prague and the South Moravian Region.

Housing. In Poland and the Czech Republic there was no centralised public settlement model, so beneficiaries of protection were free to settle where they wished and to seek assistance from local authorities if necessary. They remained entitled to integration measures and financial support regardless of their choice of settlement location.

In Poland, accommodation arrangements were swiftly made for those fleeing the war, regardless of legal status, with large-scale temporary accommodation provided by voivodes funded by the central government. Additionally, private accommodation options emerged through online platforms, while new reception centres, including container settlements, were established.

Czech Republic relied mostly on providing short-term and mid-term 'humanitarian' housing, sponsored by a state. This situation, however, also changed over time with the governmental decision to decrease the time allowed to spend in there to five, and, as a follow, three months, in an attempt to stimulate the people under protection to enter the private house market, with further compensations possible from the state.

The Role of NGOs. In the case of Poland, volunteers and grassroots initiatives played a crucial role in supporting Ukrainian refugees. Non-governmental organisations utilised their experience in assisting various groups in need and their extensive networks to provide aid. Local residents, who volunteered as grassroots workers, felt a sense of duty to help war migrants from Ukraine. However, Błaszczyk et al. (2023) note that these grassroots initiatives also required formalisation, presenting an intriguing governance case. This formalisation, while necessary, placed a

significant burden on local budgets as they had to subsidise the operational formalisation of volunteer organisations in arrival hubs. While the overall situation with the mass influx of people seeking protection demanded ‘agility’ from the governments, the NGOs have contributed to providing an alternative model of crisis response. However, as Bryan et. al. (2023) point out in the case of the Czech Republic, some national system-level barriers inhibited NGO resilience and their ability to respond effectively to the Ukrainian refugee crisis in the long term.

Despite the lack of national legislation granting integration rights to displaced persons from Ukraine, local authorities and non-governmental organisations often stepped in to fill this gap. In the Czech Republic and Poland NGOs provided language training and employment counselling, primarily funded by international sources, sometimes supplemented by local government support.

Social Benefits. Both Poland and the Czech Republic introduced special arrangements regulating the provision of social benefits to Ukrainians under temporary protection. In Poland, the one-off allowance supported by the central government was the main source of state assistance, with additional social benefits for vulnerable groups provided under the auspices of UNHCR. Those displaced persons from Ukraine who were considered ‘vulnerable’ were entitled to regular social benefits in Poland, but new restrictions were imposed from May 2023 for those residing in mass accommodation centres. These regulations introduced caps on assistance after 120 and 180 days and required individuals to pay 50% and 75% of the costs, respectively.

In summary, this model presents a compelling case study in migration governance. Poland and the Czech Republic, which lacked prior experience in managing the mass arrival of migrants, offered a wide range of solutions to Ukrainian refugees. One possible explanation for this variation may be the inadequate funding for integration processes in these countries and the reliance on Ukrainians’ social support opportunities for cooperation with larger donor organisations. Conversely, in this model, NGOs assume many of the integration functions, such as language learning and providing access to education for children. This reinforces the Ukrainian community as a cohesive entity, facilitates the maintenance of ties with Ukraine, and ultimately works towards the prospect of repatriation. On the other hand, the potential instability and unpredictability of the migration policies, combined with lowering social support systems, make the forced migrants from Ukraine reconsider their

position in the country, opting for either returning to Ukraine despite the ongoing war or migrating to a country with a more predictable support system—Germany, in the case of the EU.

8 IMPLICATIONS FOR EU AND UKRAINE'S POLICIES IN LIGHT OF THE ACCESSION PROCESS

Since temporary protection for Ukrainians under the TPD will expire on 4 March 2025 (the TPD limits the duration of protection to three years), the EU faces the challenge of developing a coordinated solution for Ukrainians' transition out of collective protection and their future status. The fact that, as we showed above, different models of TPD implementation arose across EU member states over the time of the directive's implementation aggravates this challenge. The MLG perspective and, particularly, an insight into the supranational-national facet under the EU MLG of migration clearly demonstrates the limits of the EU's ability to ensure equitable rights and degree of integration for Ukrainians across the Union. What is, however, important is that the TPD set a unified *status* for BTPs, thus serving as the lowest common denominator for member states to ensure their rights and freedoms, including the freedom of movement across the EU. Thus, the option of not introducing any EU-level response to the challenge of the TPD's expiration and leaving the issue entirely to member states would produce an array of negative consequences both for Ukrainians as (former) BTPs, as well as the EU and its member states. For individuals, the lack of a clear EU-level status would mean increased uncertainty, also as to the prospects of integrating into receiving countries' job markets and societies. It is also likely that Ukrainians, not able to fulfil requirements for common national visas and residence permits (e.g. on the grounds of university studies, qualified work, or marriage), would have to apply for asylum on individual basis. Since asylum seekers' right to work is usually limited, until their applications are approved, Ukrainians following this track would backslide on their integration path. Putting aside evident cases of individuals with a second citizenship in a safe country, it is also unclear how national authorities would evaluate such potential asylum applications, as the war continues, and Russia is able to shell the whole territory of Ukraine. Moreover, the absence of an EU-level status and related benchmarks would result in even stronger differences across member states' models of hosting and integrating Ukrainians. This would further influence their

personal trajectories, incentivising both secondary movements to member states with more favourable conditions and returns to Ukraine.

The issue of returns to Ukraine and former BTPs' reintegration there is also highly problematic. On the one hand, continuing war with Russia's shelling of civilian infrastructure all over the country makes many possible returns premature and highly risky (ReliefWeb, 2024). Potential losses of lives and injuries to former BTPs, whose return to Ukraine would have been a forced rather than a willful solution, are likely to be interpreted both by intra-EU actors and externals as the EU's policy failure, adding to many criticisms of the Union's migration and asylum policies. On the other hand, the return and reintegration of Ukrainian refugees is a priority for the Ukrainian government in light of the economic pressures of the war and reconstruction needs. As of January 2024, the Cabinet of Ministers of Ukraine made it possible for returnees from abroad to receive social benefits over the period of six months that they should use to find a job and restore their economic independence (Cabinet of Ministers of Ukraine, 2024). Moreover, all Ukrainians, whose home in a government-controlled territory was destroyed due to the invasion, can receive economic assistance to get a new home (Diia.gov.ua, 2024). Coupled with financial assistance for return to Ukraine, granted by some member states (e.g. Finland, Czech Republic), as well as Norway and Switzerland, such government support schemes promote return by reducing associated economic risks. The current Ukrainian policies, however, are marked by three important challenges. An overarching issue deals with the lack of coordination between the EU, member states, and the Ukrainian government's policies targeting the current BTPs. Such coordination could have helped to address the second crucial challenge, namely the lack of targeted assistance to individuals from occupied territories who may even wish to come back to Ukraine but lack a home. Thirdly, despite emerging assistance schemes, Ukraine lacks "an integrated approach to reintegration across the economic, social and psychological dimensions" for individuals coming back from abroad—a dimension the EU and its member states could have also assisted Ukraine with (IOM, 2023).

Against this background, it is crucial for the EU, its member states, and Ukraine to recognise and address a variation in the current BTPs' needs and trajectories. There is evidently a significant group of Ukrainians who deem it impossible to return to Ukraine, as the war continues. They may return later, yet for now, they aspire to stay and integrate in host member states. Others are willing to return even amidst the war and

will do so, if they get sufficient assistance with return and reintegration. To meet the needs of both groups amidst the continuing war, the EU and its member states should cooperate with subnational actors to offer unified and clear conditions for Ukrainians' 'dual intent' integration in the EU. As defined by the Organization for Economic Cooperation and Development (OECD), the 'dual intent' approach to integration means that respective measures are "geared towards promoting socio-economic inclusion of Ukrainian refugees, allowing them to achieve self-sufficiency, rebuild their livelihoods and enhance their human capital for improved future prospects regardless of their location, while deliberately looking to minimise potential return barriers in both host countries and Ukraine" (OECD, 2023, p.2). To be based on an EU-level coordinated decision, such an approach would reduce the pressure on national migration and integration systems, decrease uncertainty for the current BTPs, and enable them to make decisions as to whether they seek to stay in host countries or return in a willful manner. As indicated above, an important aspect of the EU's and member states' contribution to Ukraine's reconstruction both under the war and in the post-war context can thus deal with offering complex return and reintegration support packages with special solutions deemed for Ukrainians from occupied territories. Such packages can also be made available to Ukrainians in the EU, other than the BTPs (e.g. qualified workers or students), yet joint procedures to avoid misuse and fraud should be put in place. At the same time, the MLG of Ukrainians' status and stay in the EU should adopt Ukraine's EU accession as a cross-cutting policy objective, offering opportunities for skilled Ukrainian workers in the EU to contribute to this process and serve as liaisons between their host countries and Ukraine. In legal terms, the new status for displaced Ukrainians in the EU can also be connected to the EU-Ukraine negotiations on the free movement of persons as an interim stage, since the parties would anyway need to agree on the terms, conditions, and transitional periods for the application of this freedom (Van Elsuwege, 2024, in this volume).

9 CONCLUSION

The aim of this chapter has been to analyse the governance of collective protection for Ukrainians in the EU from the MLG perspective. The Council's decision to enact the TPD in response to Russia's aggression and the resulting mass influx of Ukrainians into the EU has been definitely

a wise policy choice that saved many lives without overburdening national migration and integration authorities and showed the EU's ability to effectively manage big waves of displaced persons. Nonetheless, using case studies from Germany, Sweden, Poland, and the Czech Republic, we revealed a significant variation between various models of implementing the TPD across the member states. Such models offer divergent opportunities for integration, thus immediately influencing Ukrainians' choices and trajectories as to job market participation, secondary migration, and return to Ukraine and reintegration even as the war continues. The operation of the supranational-national facet of the MLG process creates complex policy dilemmas for the EU and Ukraine, when it comes to the future status of displaced Ukrainians in the EU. We find that the EU-level coordinated response is essential to ensure a smooth transitioning out of the TPD regime for Ukrainians, so that the existing divergencies between national models do not exacerbate further, incentivising secondary migration and premature unwilful returns to Ukraine. It is recommended that the EU, member states, and Ukraine closely work together towards a 'double intent' integration system for Ukrainians in the EU that would leave the doors open for both their integration in host states and wilful reintegration in Ukraine. As the EU and Ukraine are preparing for accession negotiations, the post-TPD EU regime for displaced Ukrainians can also be designed as an interim step towards free movement of workers as one of the four freedoms Ukrainians will enjoy, as the country enters the EU (Van Elsuwege, 2024, in this volume).

REFERENCES

- Alsbeti, D. (2023). A double standard in refugee response: Contrasting the treatment of Syrian refugees with Ukrainian refugees. *Human Rights Brief*, 26(2), 72–76. <https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=2032&context=hrbrief>
- Bache, I., Bartle, I., & Flinders, M. (2016). Multi-level governance. In C. Ansell & J. Torfing (Eds.), *Handbook on Theories of Governance* (pp. 486–498). Cheltenham: Edward Elgar.
- Berlina, A. (2022). Implementation of temporary protection for refugees from Ukraine – A systematic review of the Nordic countries. Nordic Council of Ministers. <https://doi.org/10.6027/nord2022-026>
- Błaszczuk, M., Dolińska, K., Makaro, J., & Pluta, J. (2023). Governance agility in reception of war refugees from Ukraine: The case of Wrocław, Poland. *Social*

- Policy and Administration*, 58(1), 189–204. <https://doi.org/10.1111/spol.12958>
- Brücker, H., Ette, A., Grabka, M. M., Kosyakova, Y., Niehues, W., Rother, N., Spieß, C. K., Zinn, S., Bujard, M., Cardozo, A., Décieux, J. P., Maddox, A., Milewski, N., Naderi, R., Sauer, L., Schmitz, S., Schwanhäuser, S., Siegert, M. & Tanis, K. (2022, April). *Geflüchtete aus der Ukraine in Deutschland: Flucht, Ankunft und Leben*. Nürnberg. Bundesamt für Migration und Flüchtlinge.
- Bryan, T. C., Lea, M., & Hyanek, V. (2023). Resilience, ambiguous governance, and the Ukrainian refugee crisis: Perspectives from NGO leaders in the Czech Republic. *Central European Economic Journal*, 10(57), 35–49. <https://doi.org/10.2478/ceej-2023-0003>
- Cabinet of Ministers of Ukraine (2024). *Internally displaced persons and migrants, returning from abroad, will be able to get assistance for low-income families*. Retrieved 29 May 2024 <https://www.kmu.gov.ua/news/vpo-ta-ukrainski-mihranty-iaki-povertaiutsia-z-za-kordonu-zmozhut-otrymuvaty-dopomohu-malozabezpechenym-rodynam>
- Campromori, F., & Ambrosini, M. (2020). Multilevel governance in trouble: The implementation of asylum-seekers' reception in Italy as a battleground. *Comparative Migration Studies*, 8(22), 1–19. <https://doi.org/10.1186/s40878-020-00178-1>
- Chemin, J. E. & Nagel, A. K. (2020). *Integration policies, practices and experiences – Germany country report*. Global Migration: Consequences and Responses. Working Paper Series. <https://zenodo.org/records/3874426>
- Council of the EU. (2022). Implementing Decision (EU) 2022/382 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection. *Official Journal of the European Union L* 71/1.
- Council of the EU. (2001). Directive 2001/55/EC on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof. *Official Journal of the European Union L*, 212, 12–23.
- Dąbrowski, M., Bachter, J., & Bafoil, F. (2014). Challenges of multi-level governance and partnership: Drawing lessons from European Union cohesion policy. *European Regional and Urban Studies*, 21(4), 355–363. <https://doi.org/10.1177/0969776414533020>
- Danielsen, Å., Hernes, V., Tvedt, K. & Staver, A. B. (2023). *Sweden country report. Government responses to increased influx of protection seekers in 2015/2016 and 2022/2023*. NIBR Working Paper

- 2023: 114. <https://oda.oslomet.no/oda-xmlui/bitstream/handle/11250/3112660/2023-114%20Sweden.pdf>
- Darling, J. (2016). Privatising asylum: Neoliberalisation, depoliticisation and the governance of forced migration. *Transactions of the Institute of British Geographers*, 41(3), 230–243. <https://doi.org/10.1111/tran.12118>
- Diia.gov.ua (2024). *Financial compensation for housing destroyed as a consequence of Russia's military aggression*. Retrieved 29 May 2024 from [Грошова компенсація за зруйноване житло внаслідок збройної агресії РФ-Гід онлайн](https://diia.gov.ua/uk/compensation-for-housing-destroyed-as-a-consequence-of-russia-s-military-aggression) (diia.gov.ua)
- Van Elsuwege, P. (2024). Revisiting the EU-Ukraine Association Agreement: A Crucial Instrument on the Road to Membership. In A. M. Rabinovych and A. Pintsch (Eds.), *Ukraine's thorny path to the EU: From "integration without membership" to "integration through war"*. Palgrave Macmillan.
- European Union Committee of the Regions. (2009). *White Paper on multilevel governance*, CONST-IV-020. Retrieved 31 March 2024 from https://www.europarl.europa.eu/meetdocs/2009_2014/documents/regi/dv/cdr89-2009_/cdr89-2009_en.pdf.
- European Union. (2012). Consolidated version of the Treaty on European Union. *Official Journal of the European Union* C 326/13, 26 October. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12016M%2FTXT>
- European Commission. (2022, October 10). *Press remarks by Commissioners Johansson and Schmit* [Press release]. https://ec.europa.eu/commission/presscorner/detail/fr/SPEECH_22_6096
- European Parliament. (2024). *The principle of subsidiarity*. Fact Sheets on the European Union. <https://www.europarl.europa.eu/factsheets/en/sheet/7/the-principle-of-subsidiarity>
- EWL Migration Platform & Centre for East European Studies UW. (2023). *From Poland to Germany. New trends in Ukrainian refugee migration*. Retrieved 31 March 2024 from https://ewl.com.pl/wp-content/uploads/2023/09/Report_From-Poland-to-Germany_New-trends-in-Ukrainian-refugee-migration_.pdf
- Farro Sarrats, M. (2023). *Three lessons from Europe's response to Ukrainian migration*. European Council on Foreign Relations. <https://ecfr.eu/article/three-lessons-from-europes-response-to-ukrainian-migration/>
- Geddes, A., Espinoza, M.V., Hadj Abdou, L. & Brumat, L. (Eds.). (2019). *The Dynamics of regional governance*. Cheltenham: Edward Elgar. https://link.springer.com/chapter/https://doi.org/10.1007/978-3-030-92377-8_20
- Geddes, A. (2022). Migration governance. In P. Scholten (Ed.), *Introduction to migration studies. An interactive guide to the literatures on migration and diversity* (pp. 311–323). Berlin: Springer.

- Golebiowska, K., Pachocka, M., & Kubiciel-Lodzińska, S. (2024) *Poland has opened its arms to nearly 1 million Ukrainian refugees, but will they be able to stay for the long term? The Conversation*. <https://theconversation.com/poland-and-has-opened-its-arms-to-nearly-1-million-ukrainian-refugees-but-will-they-be-able-to-stay-for-the-long-term-219481>
- Haase, A., Arroyo, I., Astolfo, G., Franz, Y., Laksevic, K., Lazarenko, V., ... Schmidt, A. (2023). Housing refugees from Ukraine: preliminary insights and learnings from the local response in five European cities. *Urban Research & Practice*, 17(1), 139–145. <https://doi.org/10.1080/17535069.2023.2225333>
- Hernes, V., Øygard Danielsen, A., Tvedt, K., Balke Staver, A., Tronstad, K., Casu, L., Zschomler, S., Berg, M.L., Koikkalainen, S., Ferdoush, M.A., Virkkunen, J., Łukasiewicz, K., Pachocka, M., Yeliseyev, A., Engler, M., Nowicka, M., Kazepov, Y., Berthelot, B., Franz, Y. & N. Trell (2023). *Governance and policy changes during times of high influxes of protection seekers. A comparative governance and policy analysis in eight European countries*, 2015–June 2023. NIBR Report 2023:8. <https://oda.oslomet.no/oda-xmlui/bitstream/handle/11250/3112660/NIBR%20Report%202023-8.pdf>
- Hernes, V. (2021). The case of increased centralization in integration governance: The neglected perspective. *Comparative Migration Studies*, 9(32), 1–15.
- Hooghe, L., Marks, G., & Schakel, A. H. (2020). Multilevel governance. In D. Caramani (Ed.), *Comparative Politics* (5th ed., pp. 193–210). Oxford University Press.
- Hurrellman, A. (2021). Democratizing multilevel governance. In A. Benz, J. Broschek, & M. Lederer (Eds.), *A Research Agenda for Multilevel Governance* (pp. 37–55). Cheltenham: Edward Elgar.
- IOM. (2023). Return, reintegration and recovery. IOM's position on returns to Ukraine. Retrieved 7 April 2024 from <https://www.iom.int/sites/g/files/tmzbdl486/files/documents/2024-01/ioms-position-on-returns-to-ukraine-final-2023-rev.pdf>
- Jauhainen, J., & Erbsen, H. (2023). Multilevel governance in the temporal protection and integration of Ukrainians within the European Union: The case of Estonia. *Journal of European Integration*, 45(3), 413–430. <https://doi.org/10.1080/07036337.2023.2190109>
- Jelinková, M. (2023). *Local migrant integration policies and their structural mechanisms. A comparative study of the Czech Republic, Slovakia, Germany and Belgium*. Prague: Carolinum Press.
- Kaya, A., & Nagel, A.-K. (2021). Reception policies, practices and responses. In S. Barthoma & Ö. A. Çetrez (Eds.), *RESPONDing to migration: A holistic perspective on migration governance* (pp. 227–256). Uppsala University Press.

- Kinkartz, S. (2024). *Ukrainian refugees in Germany: Why few work for a living*. Deutsche Welle. <https://www.dw.com/en/ukrainian-refugees-in-germany-why-few-work-for-a-living/a-68338226>
- Koikkalainen, S., Pyrhönen, N., & Wahlbeck, O. (2021). Public opinion on migration and the role of the media in the context of the “European refugee crisis.” In J. Frantze & J. M. Ruano de la Fuente (Eds.), *Local integration of migrants policy. European experiences and challenges* (pp. 285–309). Cham: Palgrave Macmillan.
- Küçük, E. (2023). Temporary Protection Directive: Testing new frontiers? *European Journal of Migration and Law*, 25(1), 1–30. <https://doi.org/10.1163/15718166-12340142>
- Lajsic, J. (2022). *Protection here and now? The Temporary Protection Directive for displaced persons from Ukraine in the long run*. Konrad Adenauer Stiftung. <https://www.kas.de/en/monitor/detail/-/content/nur-ein-voruebergehender-schutz-fuer-vertriebenem>
- Lakševics, K., Franz, Y., Haase, A., Nasya, B., Patti, D., Reeger, U., Raubiško, I., Schmidt, A., & Šuvajevs, A. (2024). The permanent regime of temporary solutions: Housing of forced migrants in Europe as a policy challenge. *European Urban and Regional Studies*, 31(1), 81–87. <https://doi.org/10.1177/09697764231197963>
- Lazarenko, V. (2024). “Let the state decide it all for me”: The role of migration and integration policy in the decision-making of Ukrainian refugee women in Germany. *Journal of International Migration and Integration*. Online First. <https://doi.org/10.1007/s12134-024-01138-9>
- Migrationsverket. (2023). *Avgjorda ärenden om asyl och skydd enligt massflyktsdirektivet 2023*. <https://www.migrationsverket.se/OmMigrationsverket/Statistik/Sokande-fran-Ukraina.html>
- OECD. (2023). *Working towards dual intent integration of Ukrainian refugees*. OECD Policy Responses on the Impacts of the War in Ukraine, OECD Publishing Papers. <https://doi.org/10.1787/6b4c16f7-en>
- Ovacik, G. (2022). *The right to choose the country of asylum: The 1951 Convention and the EU’s Temporary Protection Directive*. ASILE. <https://www.asileproject.eu/the-right-to-choose-country-of-asylum-the-1951-convention-and-the-eus-temporary-protection-directive/>
- Pachocka, M., Proczek, M., & Osuch-Rak, E. (2020). Design thinking as a framework for identifying, examining and addressing wicked problems and challenges related to migration. In R. Paltrenieri, P. Parmiggiani, P. Musarò, & M. Moralli (Eds.), *Right to the city, performing arts and migration* (pp. 142–159). FrancoAngeli.
- Rasche, L. (2022). *Implementing temporary protection in the EU: From crisis response to long-term strategy*. Policy brief. Hertie School GmbH. <https://www.delorscentre.eu/en/detail/publication/temporary-protection>

- ReliefWeb. (2024). The EU must provide future-proof solutions for people displaced from Ukraine. <https://reliefweb.int/report/world/eu-must-provide-future-proof-solutions-people-displaced-ukraine>
- Sahin-Mencutek, Z., Barthoma, S., Gökalp-Aras, N. E., & Triandafyllidou, A. (2022). A crisis mode in migration governance: Comparative and analytical insights. *Comparative Migration Studies*, 10(12), 1–19. <https://doi.org/10.1186/s40878-022-00284-2>
- Schapendonk, J., van Liempt, I., Schwartz, I., & Steel, G. (2020). Re-routing migration geographies: Migrants, trajectories and mobility regimes. *Geoforum*, 116, 211–216. <https://doi.org/10.1016/j.geoforum.2018.06.007>
- Schmidke, O. (2021). Policy formation and citizenship practices: Germany's regions as laboratories of immigrant integration. *Journal of International Migration and Integration*, 22, 1349–1368. <https://doi.org/10.1007/s12134-021-00804-6>
- Scholten, P. & Penninx, R. (2016). The multilevel governance of migration and integration. In B. Garcés-Mascreñas & R. Penninx (Eds.), *Integration processes and policies in Europe* (pp. 91–108). Berlin: Springer. https://doi.org/10.1007/978-3-319-21674-4_6
- Shmulyar Gréen, O., & Odynets, S. (2024, July). *På flykt från Rysslands anfallskrig i det transnationella Europa: Mottagandet av skyddsökande från Ukraina i Sverige* [Policy brief]. Delmi. <https://www.delmi.se/publikationer/policy-brief-2024-7-pa-flykt-fran-rysslands-anfallskrig-i-det-transnationella-europa-mottagandet-av-skyddssakande-fran-ukraina-isverige/>
- Sologub, I. (2024). Ukrainian refugees: Who returns and why? *Free Network Policy Briefs*. <https://freepolicybriefs.org/2024/01/29/ukrainian-refugees-returns/>
- Spencer, S. (2018). Multi-level governance of an intractable policy problem: Migrants with irregular status in Europe. *Journal of Ethnic and Migration Studies*, 44(12), 2034–2052. <https://doi.org/10.1080/1369183X.2017.1341708>
- Thym, D. (2022). *Temporary protection for Ukrainians: The unexpected renaissance of 'Free Choice'*. EU Migration Blog. <https://eumigrationlawblog.eu/temporary-protection-for-ukrainians-the-unexpected-renaissance-of-free-choice/>
- Traub, J. (2022). *The moral realism of Europe's refugee hypocrisy*. Foreign Policy. <https://foreignpolicy.com/2022/03/21/ukraine-refugees-europe-hypocrisy-syria/>
- Tyldum, G., Kjeøy, I., & Lillevik, R. (2023). Different policies, different outcomes. The reception of Ukrainian refugees in Sweden and Norway. *Fafo*. <https://www.fafo.no/images/pub/2023/967-second-edition.pdf>

- UN High Commissioner for Refugees (UNHCR) Operational Data Portal. (2024). *Ukraine Refugee Situation*. Retrieved 31 March 2024 from <https://data.unhcr.org/en/situations/ukraine>
- Vyshlinsky, G., Samoiliuk, M., Mykhailyshyna, D., & Tomilina, M. (2023, 4 September). Ukrainian refugees: How many there are, their intentions & return prospects. *Centre for Economic Strategy*. <https://ces.org.ua/en/refugees-from-ukraine-final-report/>

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“Europe is not doing enough”. Risks of Ukraine’s Postwar Euroscepticism

Kostiantyn Fedorenko

1 INTRODUCTION

The EU’s decision to grant Ukraine candidate status has been met with celebratory response from the Ukrainian officials, and a cursory glance on surveys among the Ukrainian population shows—as described below—overwhelming support for EU membership. Nevertheless, when the devastating Russian invasion ends, the EU-Ukraine relationship will likely be more problematic than this apparent enthusiasm suggests.

This chapter takes a look at the attitudes of the Ukrainians towards the EU and its key member states Germany and France. It reveals the critical reaction towards the perceived slow delivery of military assistance—particularly by Germany—as well as the narrative of Ukraine’s moral superiority over its Western allies due to its immediate sacrifices, spread by both Ukrainian media and politicians. It also carves out five categories of critical online comments to Ukrainian news pieces regarding “the West”, the EU, Germany, or France. These categories are: 1) criticism of insufficient military assistance; 2) claims of Ukraine’s moral superiority because of its sacrifices, and of European immorality; 3) claims of Ukraine and

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its allies being stronger than Western European countries; 4) comments with explicit right-wing ideas, conspiracy theories, or hate speech; and 5) claims of Ukraine's sovereignty or national interest being impeded by the EU.

The findings point towards risks of a different Euroscepticism in postwar Ukraine; one where Ukrainians would not look to Russia as an alternative geopolitical vector anymore, but would instead support accession to the EU on their own terms (which might be unacceptable to the Union), and might fall victim to national-populist narratives. European institutions and capitals should be aware of this risk—particularly considering that a war outcome which would be perceived as a relative loss by Ukrainians would fuel this kind of national populism.

2 UKRAINIAN ATTITUDES TO EUROPEAN INTEGRATION AND THEIR EVOLUTION

When one looks at the opinion polls of the Ukrainian population regarding their attitudes towards possible EU membership, it might be tempting to tell a story of steadily increasing support for European integration. Indeed, whereas about half of the Ukrainians supported the European path in 2003 (Razumkov Centre, 2012), a poll from August 2022 shows that 92% of Ukrainians want to see their country as an EU member state by 2030 (National Democratic Institute & Kyiv International Institute of Sociology, 2022).

However, that story would have been too simplistic to reflect the reality, in which the development of attitudes towards the EU has not been linear and has been strongly influenced by the conflict with Russia. To start the overview of this development, the following sequence of changes in popular support of Ukrainians for EU accession in the twenty-first century could be established, based on opinion polls (Razumkov Centre, 2012):

- 1) In 2002, 65.1% of the respondents supported accession. This share dropped to 44.7% by November 2004. One possible reason could be the 2004 presidential campaign of Viktor Yanukovych, a candidate supported by Russia (Zhegulev, 2023).

- 2) By September 2005, the support for EU accession had dropped further to 40.1%. This could be a result of a series of political scandals between, in particular, the pro-European President Yushenko and his PM Tymoshenko (Pyrozhuk, 2005), leading to disillusionment over the pro-Western politicians in power.
- 3) Over the next year, the support for European integration had grown to 48.5%. It has fluctuated around 50% since then.
- 4) In 2010, Yanukovich was elected president. He consolidated power in an authoritarian fashion (Kuzio, 2011). In 2013, he refused to sign an Association Agreement with the EU. This prompted mass protests (“Euromaidan”), violently suppressed by the government. In February 2014, the regime of Yanukovich collapsed. Euro-maidan protesters themselves had different goals, not necessarily connected to EU accession anymore. The Democratic Initiatives Foundation has conducted three waves of surveys during Euro-maidan (07–08.12.13, 20.12.13, 03.02.14). The share of protesters who were motivated to protest by Yanukovich refusing to sign the association agreement has decreased from 53.5% to 40%, before rising again to 47%. Only 28.2% in the second wave and 17.3% in the third wave of the survey stated that signing the association agreement could be a compromise that satisfies the protesters (Democratic Initiatives, 2014a).
- 5) Since Russia has quite openly supported Yanukovich in this conflict (Ukrainian Pravda, 2014), the early 2014 opinion polls about EU accession have demonstrated a positive shift (+3.6% from March 2013, to 45.3%), while support for the Customs Union with Russia decreased to 21.6% and support for a perceived non-aligned future grew to 19.6% (Zolkina, 2014, p.10–11).
- 6) In March 2014, Russia occupied Crimea, and later on, supported insurrections within Ukraine.¹ The regions of Crimea, as well as the densely populated Donetsk and Luhans’k oblasts have systematically had high support for closer relations with Russia and very low support for European integration. However, most locals did not support separation from Ukraine (Democratic Initiatives, 2014b).

¹ In particular, on January 25, 2023, the European Court of Human Rights recognised that already in 2014, the government-uncontrolled “areas [of Ukraine] were, from 11 May 2014 and subsequently, under the effective control of the Russian Federation.” See: *Ukraine and the Netherlands v. Russia* (European Court of Human Rights, 2022).

With losing these territories with a total population of about 5.8 million (Ministry of Finance of Ukraine, 2022; Vyshnevs'kyi, 2017), and with the Russian war in Ukraine, the relative share of support for European integration increased to 57% in November 2015 (Rating Group Ukraine, 2016).

- 7) A brief drop in support for EU accession was related to a delay in granting Ukraine visa-free travel with the EU. Ukrainians saw this delay as unjustified (Kostiuk, 2016). In March 2017, 49% supported EU accession, but after visa-free travel was granted, by September, support grew to 57% (Sakhno, 2017).
- 8) With the full-scale invasion that started in February 2022, Kyiv International Institute of Sociology (KIIS) polls in May and August 2022 show that 90% and 92% Ukrainians respectively would have liked to see Ukraine an EU member state by 2030 (National Democratic Institute & Kyiv International Institute of Sociology, 2022). However, the same polls have shown 27% and 25% Ukrainians, respectively, to be willing to see Ukraine as a non-aligned (literal translation: “non-bloc”) state. It is questionable how exactly Ukrainians who want to see their country as an EU member state *and* non-aligned see their country’s future. It is possible that this option has been backed by different types of Ukrainians with certain Eurosceptic attitudes.

This brief background allows us to understand that Ukrainian public opinion on European integration has fluctuated with time, and its development has been strongly influenced by both the start of the Russian 2014–2022 hybrid war and the full-scale invasion of 2022, as well as the change in Ukraine’s control over territories. However, as explained further in the text, there is a need for a more nuanced understanding of Ukrainian attitudes towards the EU—one that would include an analysis of current Ukrainian narratives regarding “Europe”, the EU, and its leader countries, rather than a simple calculation of people supporting or opposing EU membership.

3 IF NOT EUROPE, THEN WHAT? THREE STRAINS OF EUROSCEPTICISM IN UKRAINE

Not supporting EU accession (or supporting it with major caveats) can have a range of reasons and come in a range of forms. An extensive volume of research on Euroscepticism exists, including a plurality of definitions (Vasilopoulou, 2017). The present study employs the most general definition of Euroscepticism as an “idea of contingent or qualified opposition, as well as incorporating outright and unqualified opposition to the process of European integration” (Taggart, 1998, p.365). However, for the purpose of the subsequent analysis of online commentaries, we will add an additional component—negative attitude towards Germany and/or France as key countries of the present European Union—based on the media discourse in wartime Ukraine.

Previous research on Euroscepticism in Ukraine (Fedorenko, 2018) has identified three strains: traditional left-wing pro-Russian attitudes, right-wing Ukrainian nationalism, and “soft Euroscepticism”, being, to an extent, pragmatically pursued by Ukraine’s governments and some parties. The following segment presents these strains and looks at their current political standing.

The “soft Euroscepticism” or politics of ambiguity have been, by far, the most influential in post-Soviet Ukraine. Soft Euroscepticism is defined by Szczerbiak and Taggart (2002) as the position which does not include “a principled objection to (...) EU membership but where concerns on one (or a number) of policy areas leads to the expression of qualified opposition to the EU, or where there is a sense that ‘national interest’ is currently at odds with the EU trajectory” (p.4). The second president of Ukraine, Leonid Kuchma (2004), has called Ukraine “European” many times; but also criticised the West and claimed that Ukrainian governments should be neither pro-Russian nor pro-Western, but “pro-Ukrainian”. This fits with the idea that soft Euroscepticism does not fundamentally oppose European integration, but might see EU accession as going against the national interest. Kuchma as a president balanced between the West and Russia (Khomenko, 2013). He has simultaneously signed a bill declaring “Ukraine’s integration into the European political, economic, legal space, and into the Euro-Atlantic security space” a national interest and, in the same year, a treaty on the formation of a Single Economic Space with Russia, Belarus, and Kazakhstan (Fedorenko, 2018).

Viktor Yanukovych, was, to a limited extent, following Kuchma's path of strategic ambiguity. He did, in the end, decline to sign the Association Agreement with the EU; and in 2010, he did agree to prolong the stay of Russia's military fleet in Crimea for 25 years, which he has been accused of treason in today's Ukraine (Tyshchenko, 2022). These were clear steps in opposition to European integration.

Simultaneously, it is also true that the work on preparing the Association Agreement was carried out, to a large extent, under Yanukovych's presidency, and that his decision not to sign it came as a surprise (24th Channel, 2014). The parliamentary majority his party took part in has passed a bill that, for the first time, recognised EU accession as Ukraine's foreign policy goal (Verkhovna Rada of Ukraine, 2010). Before his roundabout turn, Yanukovych was said to have pushed for European integration, despite internal dissent within his Party of Regions (Korrespondent.net, 2013).

After the Euromaidan and the outbreak of Russia's proxy war in Donbas, several political forces took a foreign policy approach that claimed to have been pragmatic. These forces included the Opposition Bloc and the Opposition Platform—For Life (two groups that have emerged from the defunct Party of Regions), as well as Sharii's Party, led by video blogger Anatolii Sharii and supported by the urban youth, particularly in Southeast Ukraine (Democratic Initiatives, 2019). In the 2019 parliamentary elections, the Opposition Platform—For Life called for stopping "mutual sanctions" and renewing the trade relationship with Russia, as well as for reviewing the conditions of Ukraine's World Trade Organisation (WTO) membership and the free trade area agreement with the EU. They have also promised "a return to multi-vector [foreign] policy" (Opposition Platform—For Life, 2019)—a characteristic wording for Ukraine's "soft Eurosceptics". The Opposition Bloc has criticised "turning Ukraine into the raw materials appendix [of the West], agreeing to the financial dictate of the IMF" (Opposition Bloc, 2019). Finally, Sharii's Party has called for "relations that are beneficial for Ukraine and not politicised with all countries" and "lobbying certain changes in favour of Ukraine" in the EU-Ukraine Association Agreement (Sharii's Party, 2019). However, none of these parties advocated to *terminate* this agreement, while supporting its review.

The support for the traditional left-wing parties *exploiting the USSR-related visuals and nostalgia for the Soviet times* has not survived the 2015 ban of the Communist Party of Ukraine. They have not been, to any

extent, a meaningful part of Ukrainian politics since. In the 2019 parliamentary elections, no traditional left-wing party even ran. In the autumn 2014 parliamentary elections, the Communist Party received 3.88% of the vote, as compared to about 13% in 2012.

These parties have opposed European integration both because they were pro-Russian and because they have utilised notions of conservative ideology (in particular, opposing “homosexual propaganda” and supporting a strong role of the Orthodox Church in the society (Glavnoe, 2012; Starodub, 2008), intending to appeal to the conservatism of older Ukrainian voters. These claims were voiced by traditional left-wing Soviet-nostalgic parties, but they cannot be viewed as leftist in their nature. An infamous campaign video of the Vitrenko Bloc, headed by the Progressive Socialist Party of Ukraine, in which an elderly woman is scared of an Orthodox priest because he is black, with the electoral slogan of “Protect canonical Orthodoxy!”, provides another clear illustration of this statement (Ukraininfo, 2012).

Halikopoulou et al. (2012) determine that a number of radical left parties in Europe demonstrate levels of nationalism that are closer to the far-right than to parties of the mainstream. However, they also find that this convergence mostly applies to economic and territorial nationalism (i.e. the idea that economic interests or sovereignty of the nation is under threat), while there is a divergence in cultural nationalism. Instead, in the case of Ukraine’s traditional left, the loudest concerns about European integration—as illustrated by the examples above—seem to have been *cultural*, thereby overlapping with the right-wing discourses. While there have been sceptical voices about the European integration from the modern left in Ukraine—predominantly *criticizing its economic risks, with an accent on the poorest parts of the population*²—this ideological segment is not represented in Ukrainian politics by any broadly recognisable party or politician.

Ukraine’s right-wing, despite the country being at war since 2014, has failed to achieve political success. VO Svoboda, Right Sector and the National Corps—parties that have explicitly advocated ethnic nationalism—failed to enter the Ukrainian parliament in 2014 and 2019.

While no studies have been published with an aim specifically to analyse why the broad voter base does not support the nationalist parties in

² For an example, see Ishchenko (2014).

Ukraine, one can assume that the Euroscepticism of these parties plays a certain role—considering that the broad Ukrainian population supports EU membership. For instance, in their earlier program (as archived in 2016), Svoboda, the most popular right-wing party in Ukraine, has mentioned the EU just once: in the context of cancelling an EU-Ukraine agreement on migrant re-admission. Otherwise, the party has advocated a political and economic Baltic-Black Sea Union instead (All-Ukrainian Association Svoboda [Freedom], n.d.). Pre-2014, the party has had contacts with the French National Front and has expressed their support for the vision of the *loose “Europe of nations”* (Chervonenko, 2015), a fundamental idea for right-wing Eurosceptics that sees less place for supranational institutions than the real-world EU.

The Right Sector has even more clearly positioned itself against EU membership, claiming that “Ukraine cannot enter any union that presumes the existence of supranational ruling bodies” and describing “Western-propagated total liberal cosmopolitanism” as a threat to “Ukrainian national identity”. They have also advocated for a Baltic-Black Sea union instead (Sektor Pravdy [Sector of Truth], n.d.). The Ukrainian nationalist parties seemingly do frame this union as a foreign policy alternative to the EU.

It is clear that some of the Ukrainian population that does not see Ukraine as an EU or NATO member state, nor as a Customs Union member, wishes for some kind of an alternative bloc with Ukraine playing a key role. In particular, these attitudes could be reinforced by the wartime feelings of some patriotic Ukrainians that they are in the avant-garde of European history, while the West is lagging behind. The next section shows how such Eurosceptic attitudes are openly presented in both the media and politics.

4 “NO OTHER ALTERNATIVE—DOES NOT MEAN WE SHOULD NOT CRITICISE NATO AND DEMAND FROM BRUSSELS”. A SHIFT IN UKRAINIANS’ PERCEPTION WITH REGARDS TO THE WEST

The attitudes of moral superiority due to Ukraine’s sacrifices and the feeling that Western support for Ukraine is insufficient are quite widespread in Ukrainian media and politics today. The title quote is slightly abridged from an article regarding the March 2022 summits

of G7 and NATO, where Ukraine was discussed (Demchenko, 2022). The author criticises the Western institutions for not being able to “hear Ukraine” properly, and for their willingness to “hold Russian forces on Ukrainian territory as long as possible in order to get prepared to meet them later”. There are claims that the Western “system of international order” does not exist anymore and that “two parallel realities—Ukrainian and Western—exist”.

The most evident public conflict between Ukrainian and Western political elites during the war has been with Germany. In April 2022, president Zelenskyy denied German president Frank-Walter Steinmeier’s visit to Ukraine, hinting that the visit at the time would be undesirable. Ukraine’s incumbent ambassador at Berlin Andrii Melnyk indicated, in particular, that he does not believe in Steinmeier’s position change regarding Ukraine and Russia and recalled Steinmeier’s involvement in the approval of the infamous Nordstream II natural gas pipeline from Russia to Germany (European Pravda, 2022). Melnyk, overall, was one of the drivers of criticism against Germany in Ukraine; he was known in Berlin for his hardline stance and was exceptionally active in the media, criticising the limited scope of German support for Ukraine (Zhukov, 2022).

In October 2022, Melnyk left his position, claiming success—although he was recalled to Kyiv soon after controversial remarks in support of Ukraine’s World War II nationalist insurgency leader Stepan Bandera (Rivkin, 2022). Since then, there have been no public scandals in Ukraine’s relations with Germany. Nevertheless, the damage has already been done; numerous articles about Germany’s limited scope of assistance (Holubov, 2022), or their allegedly wrong views on the war (Lisova, 2022), have been published in Ukraine before and after Melnyk’s departure. One such article (Holubov, 2022) was called “Sometimes Again. Why Germany slows down European assistance to Ukraine”, in a reference to the well-known slogan “Never again” regarding World War II. As the subsequent comments overview will show, some Ukrainians, while criticising Germany’s insufficient support, have also called Germans “fascists” or claimed they “have not changed” (as implied, since Nazi times).

This attitude to one of the European Union’s core countries being widespread in the Ukrainian society is important for the future of its political orientations. In fact, this perception of Germany has even contributed to the creation of new ethnonational slurs in Ukrainian

language; Germany was repeatedly called “Nikchemchyna” [*a portmanteau of the country name in Ukrainian, Nimechchyna, and the word nikhema, meaning “loser, worthless person”—K.F.*] (Taran & Zaiats’, 2022) and Germans, less often, “gazoniukhy” [*gas-breathers, in reference to the country’s dependence on the Russian gas.—K.F.*] (e.g. Your Jupiter, 2022; Klekov et al, 2022).

National surveys in Ukraine have also shown a widespread negative attitude towards the chancellor Olaf Scholz—54% of Ukrainians in April 2022 have rated their attitude towards him “rather negative” or “fully negative”—as well as Steinmeier (45%). 18% have a negative attitude towards Emmanuel Macron—however, German leaders are criticised, by far, to the largest extent (Rating Group, 2022). It is not unlikely that ambassador Melnyk and his flurry of media activity in criticising the German government have contributed to this gap in perception (despite it being questionable whether in reality, the gap between German and French assistance to Ukraine was that large). To compare, in September 2021, 73% of Ukrainians have positively evaluated then-chancellor Angela Merkel, as she was the most popular foreign politician in the country (Hubenko, 2021)—although she has been criticised in the Ukrainian public space much more after the outbreak of the war, with this change driven by Ukrainian officials like Melnyk and presidential advisor Mykhailo Podoliak (Semenova, 2022).

The problem, however, is deeper than the attitude to Germany only. First, the same April 2022 poll has shown that the Polish, British, USA, and Lithuanian leaders are the most popular, while the Turkish leader Erdogan also enjoyed a high degree of popularity among Ukrainians (Rating Group Ukraine, 2022). As seen from this picture, only two of the most popular leaders are from the EU member states—and Poland’s government at the time has been in conflict with the European institutions in the past years. That constellation might be alarming for Ukraine’s future relationship with the EU—particularly because the Union’s internal political struggle against states with autocratic tendencies would mean a lower appetite for enlargement, even more so if the candidate country has a close relationship with one of the autocratic governments.

Furthermore, numerous articles have been produced in Ukraine claiming its moral superiority over the West. Authors have claimed that Ukraine is a “moral compass” (Andrusiv, 2023) and “moral leader” of the West (Troshchyn’ska, 2023), criticised the West for not following its own

“values and principles” (Portnikov, 2023). The major oppositional leader and former president Petro Poroshenko (2022) has claimed that “Ukraine must obtain the status of an EU candidate, since this goal is bound by the blood of Ukrainian patriots”. In that line, the minister of reintegration of temporarily occupied territories Iryna Vereshchuk claimed that “we will ask to admit us as soon as possible to the EU. We have deserved, by the price of our blood, to be equals among equals, in the cohort of civilised countries of the European family” (Makarenko, 2022).

It is clear that this moral superiority rhetoric might be used in attempts to substitute legal and economic criteria for the EU membership by emotional demands. These demands might play a significant role in Ukraine’s relationship with the EU—particularly since both the government and the opposition utilise this rhetoric device. Of course, it is unreasonable to expect that the EU will admit Ukraine based on its military merit, particularly considering problematic political developments inside Zelenskyy’s Ukraine (Berger & Khudov, 2022). Seeing this, it is likely that the hopes and expectations of postwar Ukraine will not go in line with what the EU is ready to deliver. This provides a window for future Euroscepticism.

5 UKRAINIAN WARTIME ONLINE DISCOURSES REGARDING EUROPE: AN OVERVIEW

In order to find out whether critical views towards the European Union, Germany, and France have spread among the Ukrainians at large, further representative studies are needed. Our aim is, instead, to explore different categories of comments containing these critical views, depending on the nature of their criticism. In particular, we highlight categories that can be associated with right-wing Euroscepticism.³

To be sure, large swaths of the Ukrainian population are not too active online, while others are divided across a number of platforms.⁴ This alone, together with the exploratory nature of our study, precludes us from generalising our findings onto the general Ukrainian population. Three online platforms where Ukrainians find their political news most often are

³ As mentioned, left-wing Euroscepticism that is not associated with traditional pro-Soviet, pro-Russian views has extremely low popularity in Ukraine; we did not encounter commentaries that contained it.

⁴ For details, see: Snopok (2023).

Telegram, YouTube, and Facebook (Zhyla, 2022). We have concentrated on Facebook and Youtube, since, for the most popular Telegram channels in Ukraine, the archive of comments under old messages is no longer available. Importantly, 60% of Ukrainians who are under 35 years old use Facebook (PlusOne Social Impact, 2021), which differs from some Western countries where it is, stereotypically, a social network for older generations.

In order to look into the categories of Ukrainian comments criticising the EU, Germany, and France, we analysed the commentary sections of 80 news pieces. Only pieces mentioning “European Union”, “Europe”, “European Commission”, “Leyen”, “Borrell”, “Germany”, “German”, “France”, “French”, “Scholz”, “Macron”, “Steinmeier”, 40 each on Facebook and Youtube, were included. Initially, 10 more news pieces had been analysed that included terms “NATO” and “the West”; these pieces were, however, omitted for the final analysis that concentrates on the EU and its member states and key political figures.

The news pieces were sourced from UNIAN, Ukrainian Pravda (UP), and TSN. These all are major, established Ukrainian media that simultaneously are three out of seven media leading by the largest number of text-based Facebook posts on their pages (Kriuchok, 2019); they are all represented on Youtube as well and have their comments sections open. For Ukrainian Pravda, since they use compound videos with several stories on their Youtube channel, we also used the videos of their partner media—European Pravda (EP)—that specifically concentrates on Ukraine’s foreign policy and international relations.

The period of this overview is February 2022 (including posts before 24.02.22, since the military tensions have already been elevated before the outbreak of the war) to April 2023 (15 months). For each month, comments for one post by each source were analysed. Different news items were selected for Youtube and Facebook.

We are aware of the fact that these commentary sections might have been skewed by the presence of online trolls. It has been confirmed that Russia has used troll farms to shape online discourses, both in the EU’s (Neidhardt, 2022) and in Ukraine’s media space (Detector Media, 2022). We have excluded comments written from an explicitly pro-Russian position. However, it is likely that some of the other negative comments also originate from them. Nevertheless, the troll activity can confirm that Russia sees the potential Euroscepticism in Ukraine as an idea that has a political perspective and is worth investing resources in.

Finally, it is important to reiterate that this is an exploratory study; the videos, albeit evenly split over time, are only a convenience sample. It is useful to find out a number of categories of comments that contain Eurosceptic ideas; however, it is not representative for the attitudes of Ukraine’s online population, and even less so for Ukrainians overall.

As a result of simple inductive content analysis (Vears & Gillam, 2022), we were able to establish five broader ad hoc categories of commentaries. The first, and seemingly very prevalent, is related to *insufficient scope of European military assistance to Ukraine*. Within this category, some commentators claim the West had security obligations to protect Ukraine according to the 1994 Budapest Memorandum, and apparently thought EU member states were sides to this guarantee. For instance, one comment to a news piece about Josep Borrell, EU High Representative for Foreign Affairs and Security Policy, says he should “oblige the security guarantors [of the Budapest memorandum], in which Ukraine has given a gift of its own nuclear weapons, to finish dealing with the enemy and to stop the mass murder of Ukrainians” (July 2022, UP Facebook). This category cannot, by itself, be attributed to any particular strain of Euroscepticism.

The second category is related to Ukraine’s *suffering and its moral superiority* over the West with regards to the ongoing war. Some comments, while still accenting on Ukraine’s sacrifices, imply it has shared values with Europe, e.g. “Ukraine is paying with its blood for the freedom of Germany and all democratic countries” (April 2022, EP YouTube). Many others, however, perceive Ukraine and Europe as almost moral opposites. One claim is that Europe is hiding behind the backs of Ukrainian soldiers; for instance, one comment says, “[Europeans] are waiting [for Russian economy to collapse] hiding behind Ukraine, at the price of Ukrainian lives...” (July 2022, UP Facebook). In a comment, “Ukraine is worthy! But is the “European Union” WORTHY...—OF UKRAINE?” (June 2022, UNIAN YouTube), the criteria of “worthiness” are not described, but Ukraine’s superiority is implied. These statements by themselves are not necessarily right-wing, but they do contain a fundamentally negative view of today’s Europe that might be exploited by right-wing Eurosceptics.

This category has a subcategory of comments that not only see Ukraine’s moral superiority over the West, but claim that the EU’s perceived immoral position in this war would soon lead to its collapse. “In the past months Ukraine has proven that we are not just on the EU level,

morally we are even better!! EU will not exist in 20–30 years, Ukraine should keep with Poles and Balts, and not Scholzes and Macrons who lick [Putin’s] arse”, claims a commentator on the TSN page (June 2022). Another comment refers to that and exhibits moral superiority—substituting, in particular, economic corruption that Ukraine is criticised for by “moral corruption”: “Disgusting two-faced nation”, with a distorted hypocritical “feeling of justice”, THAT ATTEMPTS TO REPENT FOR THEIR OWN BLAME (...), morally corrupt (laughable that with that, they say something about corruption in Ukraine) and simply unworthy. No wonder that both the US and Britain have problems with them. They’ve seen in time what kind of s—t this Deutschland is and left, in order not to go down with such “allies” (EP & February, 2022).

The third category, on the contrary, *elevates Ukraine’s power and influence, or that of its perceived allies—Poland, Baltic states, or the United Kingdom*. As one wrote in June 2022 (UNIAN Facebook) with regards to the CNN reporting that Ukraine’s accession to the EU may take decades, “it’s just not beneficial for those old geezers to have an allied country that is stronger than themselves (...) as a member state”. Another comment says, “Ukraine has de facto proven to the whole world that it can do more for the world than NATO and the UN” (UP YouTube, September 2022).

Some users repeat the claims lifted by the right-wing parties about Ukraine’s reliable allies being the countries of the Baltic-Black Sea axis: “Except Poland, Lithuania, Latvia and Estonia, Ukraine does not have allies in Europe, everyone else are either keeping silent or hypocritically lying!” (UP, April 2022), “Europe is yesterday. Today is England, Poland, Baltic states, Turkey, and of course the US. We should hope for and listen to them” (May 2022, TSN Facebook), “Nothing is that simple [with regards to Germany’s and France’s support claims]. There are some conditions that are not made public, for instance, ‘stop shooting’, or to cancel a military union with Great Britain, Poland, Lithuania, and Turkey, once mentioned by B. Johnson” (EP YouTube, June 2022). This should not be automatically treated as a messaging success of the right-wing Ukrainian parties; rather, as the opinion polls indicate, with the disappointment over Germany and France, the leaders of Poland, the Baltic states, and the United Kingdom stand to be the most trusted. However, this does support the risk of right-wing Euroscepticism spreading in Ukraine.

The fourth category includes comments with *explicit right-wing ideas or conspiracy theories*. There have been seemingly few anti-Western

comments in this sample that were written with explicit markers of far-right ideology. Two characteristic ones refer to the issues of gender policies and LGBT rights, among others: “And what demands do they [the EU] have?” “Take all the grain from Ukraine... Vaccinate everyone en masse... And for people to be concerned with “genders”... Maybe they will think something else... Like ‘tolerance’” (TSN Facebook, June 2022) and “They are concerned about their European VALUES GENDER EQUALITY GAY PRIDES HOMOSEXUAL MARRIAGES CHILDREN ADOPTION BY F—TS AND LESBIANS LEGALISATION OF MARIJUANA, THAT’S THE PRICE OF THEIR FREEDOMS AND RIGHTS” (UNIAN Facebook, March 2022).

Another comment, from a user claiming to be a Ukrainian in France, says, “all legalised migrants, won’t say from which countries so that you don’t call me racist, voted for [Le Pen], one thing’s good is that this pro-Russian bastard did not [win]. Although Macron is not better, maybe his mind clears up. Hopefully there won’t be 2-hour talks with the terrorist” (TSN Facebook, April 2022). The claim here is twofold; it is both directed against the peacenik political practice of Macron and involves an anti-migrant sentiment. On European Pravda YouTube (February 2022), another user posted, “Crucible of [Christian] missionaries is lying under Islam, bleeding its population dry for the needs of large Arab families who do not intend to ‘work for the infidels’”. The government is only interested in business, not in their people’s welfare. Is it possible to preserve moral values here?” Here, an even more explicit far-right position is demonstrated.

This section also involves manifestations of already known right-wing conspiracies. One user on the Ukrainian Pravda Facebook (February 2023) has posted a comment with a picture of Putin and Zelenskyy together, with a Star of David between them, and the Latin letters V O Z (referring both to the Russian acronym for the World Health Organization and the letters V and Z, used as symbols by the Russian military). The inscription on the picture says, “we’ll make goyim [gentiles] quarrel, then move NATO [troops] in and will finish forcefully injecting them with goo.⁵ In the meantime, let the idiots make war...”. In the same thread, he later posted a declaration where he “liquidates the private corporation named UKRAINE” with the “aim to stop the fixed war”. This, of

⁵ The original word is *zhizha*, a word often used in the Russian-speaking anti-vaccination milieu to refer to the COVID vaccine.

course, contains several characteristic far-right conspiracy theory markers: antisemitism; anti-vaccination attitude; the internationally spread claim (existing among, for instance, “sovereign citizens” in the US (Krause, 2022) or “Reichsbürger” in Germany (Steinhaus, 2022) about their state being a private company.

The part most interesting for us here, however, is the belief that Putin, Zelenskyy, and NATO have conspired to “fix” the war in Ukraine; the implication of this worldview is that the West is as bad and as guilty as Russia. Of course, this is an extremely exotic collection of beliefs that has little chance to become widespread in Ukraine. However, cases of other countries dealing with their extreme right movements show that people with such exotic views can still pose a major public risk. Furthermore, two comments with unprompted mentions of vaccination indicate that Eurosceptic attitudes could also find a fertile ground in the anti-vaccination milieu.

Further, there are other conspiratorial comments about Europe’s possible collusion with Russia or perceived benefits from the war, usually involving a negative attitude to Germany. For instance, one comment said, “This once again confirms theories that [Putin] has in advance agreed with the *nimchura* [derogatory name for Germans] and the frog-eaters before attacking Ukraine! That’s how Europe is, that’s the european union!!! Of course not all of it, but its key actors have silently observed what was happening and have been counting their bonuses they were promised by (or even transferred by) Putin’s gang!” (UP Facebook, December 2022). Others stated, “The conspiracy of Russia and Germany, from [19]39, goes on today” (UP Youtube, March 2022), “[Germans are] just [bought by Putin] and France is also just playing [as if they support Ukraine] for the audience” (UNIAN Facebook, March 2022) and “[The war should be over] in 1 year, or does [Scholz] benefit from it lasting for years?” (TSN Facebook, March 2023).

This category also encompasses comments that were on the border of hate speech towards Germany or Germans, or referred to their Nazi past: “Germans are and will be Germans, they will never repent...” (UP Facebook, May 2022), “Russists and fascists are one” (regarding Germany; UNIAN Facebook, August 2022). Others just used ethnic slurs, like the comment “Let *nimaka* [derogatory name for Germans] feel what the Ukrainians feel!!!” (TSN YouTube, October 2022) or the one in the paragraph above. Interestingly, pro-Russian commentators on YouTube have

also constantly referred to Germany’s Nazi past, but criticising it for siding with Ukraine.

Finally, the fifth category encompasses *concern about Ukraine’s sovereignty or interests being impeded by the EU*. One comment said, “are you ready to give up our sovereignty, for which heroes die on the frontlines, for the membership in another union? Didn’t we have enough of the previous one [the Soviet Union]?” (UNIAN Facebook, January 2023). This comment combines the abovementioned feeling of moral superiority with the ideological claim that a nation should be as sovereign as possible. A similar notion might be read from another comment: “Am I the only one to think it’s not a great idea? Maybe economic and business relations [with the EU] are better [than membership]?” (TSN Facebook, February 2023). This category of claims could be compatible both with soft Euroscepticism (through the ideas that European integration or EU’s policies should be adjusted to accommodate national interests better) and right-wing ideas (through the concerns about national sovereignty being lost to the EU).

Several comments seemingly concerned with the same issue mentioned Brexit. For instance: “Maybe someone knows why such a rich England left from [the] dream we [want] to get into” (UNIAN Facebook, January 2023), “So why are we aiming for this freaking EU if even England left it not to fund the freeriders” (UP Facebook, April 2022). Interestingly, these comments and several others have mentioned “England” leaving the EU—although it is understandable that many people could confuse it with the United Kingdom, this particular wording used over several comments could also be a sign of coordinated troll messaging.

6 DISCUSSION. RISKS OF EUROSCEPTICISM FOR POSTWAR POLITICAL DEVELOPMENTS IN UKRAINE

A 2023 opinion poll has shown that only 23% of Ukrainians would like to see someone replacing Zelenskyy when the war ends (NV.ua, 2023). Nevertheless, as long as Ukraine is in the state of war, the elections are unlikely to take place. Furthermore, the outcome of this war will directly impact the attitudes of the voters, their positions—and their composition, since Ukraine intends to return all of the territories that belong to it by international law, including Crimea and parts of Donbas that weren’t controlled by the Ukrainian government since 2014. In addition,

returning Ukrainian refugees, having lived in Western societies, will have an unknown influence on the vote.

One thing is certain: for the near-term perspective, we should not expect clearly pro-Russian parties or politicians to emerge in postwar Ukraine due to the broad unpopularity of this position. However, should Ukraine reclaim its southeastern territories, which had large swaths of pro-Russian voters even earlier, it will necessarily face the problem of integrating the population of these territories into Ukraine's socio-political system. The population of these territories will look for politicians and parties that represent them.

With time, we can expect that some candidate or party would represent the demands of these voters. It is likely that this candidate would follow the footsteps of the "soft Eurosceptic" politicians to some extent—declarations like juxtaposing being "pro-Ukrainian" to "pro-Western" are, in particular, quite possible, and so is criticism of some unpopular moves that Ukraine would have to undertake for European integration. This bears a certain reminder of the political leaders in Western Balkans; and the reason such leaders could find popularity in postwar Ukraine could be the same—a disillusionment over promises of prosperity that people associate with the European integration.⁶ If Ukraine's European integration process slows down and membership remains only a distant promise, these politicians are likely to gain in popularity.

The findings of our overview of online commentaries, as well as the proliferating position of moral superiority in the Ukrainian media, confirm that there is a serious electoral field for the politicians critical towards the West. We have already mentioned that postwar Ukraine is likely to utilise its many sacrifices as an argument in talks with the West—and the European Union, in particular—to achieve higher goals, with EU membership being the most ambitious one. However, the discrepancy between these expectations and what the EU is ready to deliver will provide opportunities for Eurosceptic political forces within Ukraine.

The results of the overview indicate that, while most Ukrainians say in surveys they want to see Ukraine a member of the European Union, they are also quite critical about today's West, and in particular about France and Germany as two key Western European EU member states that are also broadly present in Ukrainian media. These countries, as

⁶ For a cautionary history of these processes in Western Balkans, see: Holmes and Krastev (2019).

well as the European institutions, will need to consider that Ukrainians have developed a certain mistrust towards them during the war. Germany in particular has gone from Angela Merkel being one of the foreign politicians most liked by Ukrainians in late 2021 to Olaf Scholz being one of the most mistrusted foreign politicians. If these two states do nothing, it is likely that the EU’s political strategy regarding Eastern Europe will suffer a significant blow as disillusionment over Europe would likely result in a more problematic foreign policy, in a similar scenario to what Holmes and Krastev (2019) described in the Western Balkans. However, if Germany, France, and the EU overall engage actively and efficiently in Ukraine’s postwar reconstruction effort, it is possible that the attitudes of Ukrainians will recover with time. The fact that, according to Rating Group Ukraine (2023), 65% of Ukrainians saw Germany as a friendly country in 2022, and 80% in 2023, provides grounds for cautious optimism.

There is, however, visible potential for all three strains of Euroscepticism in postwar Ukraine. According to a June 2023 poll (Institute of Sociology of the National Academy of Sciences of Ukraine, 2023), 18.8% of Ukrainians now label themselves nationalists, as compared to 3–4% before February 2022—although, when the war ends, this change might revert with time. The fact that there were few comments written from an explicitly far-right standpoint demonstrates that the right-wing parties in postwar Ukraine might be less likely to utilise explicitly ideological (e.g. anti-LGBT, anti-migration) parables and more likely to justify their anti-EU stance with claims of moral superiority or the need to protect Ukraine’s sovereignty. In addition, other categories of claims that we have highlighted—about Europe’s moral bankruptcy or the perceived strength of Ukraine and its allies—might be exploited by the far-right to gain political power. This presents a risk of the rise in support for the Ukrainian far-right parties in the postwar elections. However, one needs to consider that the 2014–2022 limited scale conflict in Donbas has also provided fruitful ground for the far-right, but these parties have failed to capitalise on the opportunity—in particular, because most Ukrainian parties have positioned themselves as patriotic and anti-Russian, which they are also expected to do after the end of the war.

The far-left Eurosceptic niche in Ukraine remains open—however, with the war experience and with the association many Ukrainians hold between Russia and the Soviet Union, it is unlikely that this ideology takes hold. In our sample, we have not observed comments criticising

European integration specifically from that position. However, Ukraine will, for a certain period time immediately after the war ends, remain in a dire economic situation, with the destruction of its infrastructure and enterprises, and with some refugees likely not returning home, while some male Ukrainians who were not allowed to leave the country during the war will do so. This will create an opening for Eurosceptic parties with a populist centre-left economic agenda.

7 CONCLUSIONS

Finally, soft Euroscepticism might grow in postwar Ukraine based on the idea that we observed in one of our categories—that European integration contradicts some of Ukraine’s national interests. In particular, if Ukraine reintegrates all of its territories, it is likely that some of the formerly pro-Russian voters would support a soft Eurosceptic candidate—similar to how, after the conflict started in 2014, the support for a Customs Union with Russia dropped, but support for a non-aligned future of Ukraine significantly increased. If such a candidate wins, Ukraine is likely to remain committed to European integration at least rhetorically, but might slow down the practical implementation of necessary reforms, citing, in particular, national interest as a reason.

REFERENCES

- All-Ukrainian Association Svoboda [Freedom]. (n.d.) *Programa zakhystu ukraintsiiv [Program for the protection of Ukrainians]*. Svoboda.org.ua <http://svoboda.org.ua/party/program/>
- Andrusiv, V. (2023). *Ukraina iak moral'nyi kompas Zakhodu* Україна як моральний Західний компас. [Ukraine as the West’s moral compass]. Glavcom.ua. <https://glavcom.ua/columns/vandrusiv/ukrajina-jak-moralnij-kompas-zakhodu-929452.html>
- Berger, M., & Khudov, K. (2022). As war grinds on, old Ukrainian political divisions are reemerging. *Washington Post*. <https://www.washingtonpost.com/world/2022/08/03/ukraine-political-divisions-zelensky-mayors/>
- Chervonenko, V. (2015). *Ле Пен і Тіаґнібок: чому друзі стали ворогам* [Le Pen and Tiahnybok: why did the friends become enemies?]. BBC. https://www.bbc.com/ukrainian/politics/2015/06/150527_le_pen_svoboda_vc
- Demchenko, O. (2022). *Саміти розчарувань, або коли Захід почує Україну* [Summits of disappointments, or When will the West hear

- Ukraine?]. LB.ua. https://lb.ua/world/2022/03/26/511145_samiti_rozcharuvan_abo_koli_zahid.html
- Democratic Initiatives. (2014). *Від Майдану- табору до Майдану- січі: що змінилося [From Maidan the camp to Maidan the Sich: what has changed?]*. Republished by *Ukrains'kyi Pohliad (original version no longer available)*. dif.org.ua. <http://ukrpohliad.org/analytics/vid-majdanu-taboru-do-majdanu-sichi-shho-zminy-losya.html>
- Democratic Initiatives. (2014). *Чи властиві українцям настрої сепаратизму? - Загальнонаціональне опитування. [Are separatist attitudes characteristic for the Ukrainians? Nationwide survey]*. <https://dif.org.ua/article/chi-vlastivi-ukrainsyam-nastroi-separatizmu-zagalnonatsionalne-opituvannya>
- Democratic Initiatives. (2019). *Хто за кого проголосував: демографія Національного екзит-полу на парламентських виборах-2019. [Who voted for whom: Demography of the National exit poll for the 2019 parliamentary elections]*. dif.org.ua. <https://dif.org.ua/article/khto-za-kogo-progolosuvav-demografiya-natsionalnogo-ekzit-polu-na-parlamentskikh-viborakh-2019>
- Detector Media. (2022). *Кількість російських тролів в Україні з початку війни подвоїлася. [The number of Russian trolls in Ukraine doubled since the war had started]*. <https://ms.detector.media/sotsmerezhi/post/29789/2022-07-04-kilkist-rosiyskykh-troliv-v-ukraini-z-pochatku-viyny-zbilshylas-vdvichi/>
- European Court of Human Rights. (2022). *Case of Ukraine and the Netherlands v. Russia*. Decision. Strasbourg. (European Court of Human Rights, 2022). <https://hudoc.echr.coe.int/eng?i=001-222889>
- European Pravda. (2022). *Посол розповів, чому Україна відмовила Штайнмаєру у візиті. [Ambassador has clarified why Ukraine has declined Steinmeier's visit]*. <https://www.euointegration.com.ua/news/2022/04/13/7137784/>
- Fedorenko, K. (2018). Ukraine: Pro-European majority and the chances of revenge. In P. Moreau & B. Wassenberg (Eds.), *European integration and new anti-Europeanism Perceptions of external states on European integration* (Vol. 3, pp. 113–130). Franz Steiner Verlag.
- Glavnoe. (2012). *Сімоненко по просьбі трудящихся потрібно заперетить гомосексуалізм. [Symonenko, on behalf of the workers, demands to ban homosexuality]*. <http://glavnoe.ua/news/n108212>
- Halikopoulou, D., Nanou, K., & Vasilopoulou, S. (2012). The paradox of nationalism: The common denominator of radical right and radical left Euroscepticism. *European Journal of Political Research*, 51(4), 504–539. <https://doi.org/10.1111/j.1475-6765.2011.02050.x>
- Holmes, S., & Krastev, I. (2019). *The light that failed: A reckoning*. Allen Lane.

- Holubov, O. (2022). *Інколи знов. Чому Німеччина гальмує європейську допомогу Україні*. [Sometimes again. Why Germany slows down European assistance to Ukraine]. Ukrain's'kyi Tyzhden?. <https://tyzhden.ua/inkoly-znov-chomu-nimechchyna-halmuie-ievropejsku-dopomohu-ukraini/>
- Hubenko, D. (2021). Опитування: Українці найкраще ставляться до Меркель. [Survey: Ukrainian attitudes are the most positive towards Merkel]. Deutsche Welle. <https://www.dw.com/uk/opytuvannia-ukraintsi-naikrashchestavliatsia-do-merkel-naihirshe-do-putina/a-59132672>
- Institute of Sociology of the National Academy of Sciences of Ukraine. (2023). Соціологічний моніторинг «Українське суспільство» [Sociological monitoring «Ukrainian society»]. https://kiis.com.ua/materials/pr/20230829_d/%D0%9F%D1%80%D0%B5%D0%B7%D0%B5%D0%BD%D1%82%D0%B0%D1%86%D1%96%D1%8F-%D0%BC%D0%BE%D0%BD%D1%96%D1%82%D0%BE%D1%80%D0%B8%D0%BD%D0%B3%D1%83-2023.pdf
- Ishchenko, V. (2014). Ukraine's Fractures. *New Left Review*, 87. <https://newleftreview.org/issues/ii87/articles/volodymyr-ishchenko-ukraine-s-fractures>
- Khomenko, S. (2013). *Епоха Кучми: десять неоднозначних років*. [Age of Kuchma: ten ambiguous years.] BBC Ukraine. http://www.bbc.com/ukrainian/politics/2013/08/130809_kuchma_epoch_sx
- Klekov, A., Voichenko, A., Polishuk, D., & Kharbyshev, D. (2022). *Реабілітація військових, газонюхи, контент та розваги під час війни*. [Rehabilitation of soldiers, gas-breathers, content and entertainment during wartime]. KPP Podcast. Spotify, ep.20. <https://open.spotify.com/episode/789zy2kJocC56MCbbR4uyp>
- Korrespondent.net. (2013). *Кореспондент з'ясував, чому Янукович перетворився з проросійського політика на євроінтегратора* [Correspondent has found out why Yanukovich has transformed from a pro-Russian politician into a European integrator]. Korrespondent.net. <http://korrespondent.net/ukraine/politics/1600418-korrespondent-vuyasnil-pochemu-yanukovich-prevratilsya-iz-prorossijskogo-politika-v-evrointegratora>
- Kostiuk, V. (2016). *Чим стала Україна для Європи та Європа для України: погляд на 2016 рік*. [What did Ukraine become for Europe and Europe for Ukraine: a look at 2016]. Radio svoboda. <https://www.radiosvoboda.org/a/28201634.html>
- Krause, K. (2022). What are sovereign citizens and what do they believe? *Dallas News*. <https://www.dallasnews.com/news/politics/2022/09/06/what-is-a-sovereign-citizen-and-what-do-they-believe/>
- Kriuchok, M. (2019). Викривлена реальність українського фейсбуку: які онлайн-ЗМІ читають українці на фейсбуці? [A distorted reality of the Ukrainian Facebook: which online media are being read by Ukrainians on Facebook?]. Vox Ukraine. <https://voxukraine.org/vikrivlena-realist-ukrayinskogo-fejsbuku/>

- Kuchma, L. (2004). *Україна не Росія. Ukraina – ne Rosiia [Ukraine is not Russia]*. Vremia, Moscow.
- Kuzio, T. (2011). *How to turn a ‘Partly Free’ Ukraine into a ‘Not Free’ Ukraine*. Radio Free Europe. https://www.rferl.org/a/commentary_partly_free_ukraine_to_not_free/2310282.html
- Lisova, I. (2022). *Чому Німеччина намагається примирити українців і росіян, замість того щоб зайняти більш чітку позицію? [Why Germany attempts to make peace between Ukrainians and Russians, instead of taking a more clear stand?]*. Zaborona. <https://zaborona.com/chomu-nimechchyna-namagayet-sya-prymyryty-ukrayincziv-i-rosiyan-zamist-togo-shhob-zajnyaty-chitku-pozycziyu/>
- Makarenko, I. (2022). *Ірина Верещчук: Ірина Верещук: Україна своєю кров’ю заслужила членство в ЄС. [Iryna Vereshchuk: Ukraine has deserved EU membership through its blood]*. Ukrainian national news. <https://www.unn.com.ua/uk/news/1965842-irina-vereschuk-ukrayina-svoyeyu-krovyu-zasluzhila-chlenstvo-v-yes>
- Ministry of Finance of Ukraine. (2022). *Чисельність населення АР Крим у 2014 [Population numbers of the Autonomous Republic of Crimea in 2014]*. Minfin.ua. <https://index.minfin.com.ua/ua/reference/people/krym/>
- National Democratic Institute and Kyiv International Institute of Sociology. (2022). *Можливості та перешкоди на шляху демократичного переходу України.[Opportunities and obstacles on Ukraine’s path of democratic transition]*. https://www.kiis.com.ua/materials/pr/20220920_o/August%202022_wartime%20survey%20Public%20fin%20UKR.pdf
- Neidhardt, A.-H. (2022). *Disinformation on refugees from Ukraine: Boosting Europe’s resilience after Russia’s invasion. Issue Paper: European Migration and Diversity Programme*. https://www.epc.eu/content/PDF/2022/Disinformation_IP_v3.pdf
- NV.ua. (2023). *Тільки 23% українців хотіли б змінити Зеленського після перемоги у війні — опитування КМІС [Only 23% of Ukrainians would like to replace Zelenskyy after victory in the war – KIIS survey]*. New Voice. <https://nv.ua/ukr/ukraine/politics/peremoga-u-viyni-z-rf-chi-hochut-ukrajinci-bac-hiti-zelenskogo-prezidentom-novini-ukrajini-50332887.html>
- Opposition Bloc. (2019). *Party program*. https://centreua.org/vybory2019/pdf_programy/opoblok.pdf
- Opposition Platform – For Life. (2019). *Party program*. https://centreua.org/vybory2019/pdf_programy/opoplatforma.pdf
- PlusOne Social Impact. (2021). *Facebook та Instagram в Україні [Facebook and Instagram in Ukraine]*. plusone.com.ua. <https://web.archive.org/web/20211223070720/https://plusone.com.ua/research/Facebook%20%D1%82%D0%B0%20Instagram%20%D0%B2%20%D0%A3%D0%BA%D1%80%D0%B0%D1%97%D0%BD%D1%96%20-%202021%20%D0%BB%D0%B8%D0%BF%D0%B5%D0%BD%D1%8C.pdf>

- Poroshenko, P. (2022). *Заявка на членство в ЄС підписана кров'ю українців. [Application for the EU membership is signed with the blood of Ukrainians]*. Petro Poroshenko's channel. <https://www.youtube.com/watch?v=oCZpegenwE0>
- Portnikov, V. (2023). *Війна Росії проти України та Заходу: помилки та висновки. [Russia's war against Ukraine, and the West: mistakes and conclusions]*. Radio Svoboda. <https://www.radiosvoboda.org/a/vitaliy-portnykov-zakhid-rosia-viyna-pomylyk-vysnovky/32252438.html>
- Pyrozhuik, M. (2005). *Конфлікт між Ющенком і Тимошенко, на думку українських політологів, може призвести до кризи в Україні. [Conflict between Yushchenko and Tymoshenko, according to Ukrainian political analysts, could lead to a crisis in Ukraine]*. Radio Svoboda. <https://www.radiosvoboda.org/a/930693.html>
- Rating Group Ukraine. (2023). *Оцінка обраних країн за рівнем дружельності до України (1–2 червня 2023 р.). [Evaluation of selected countries by their level of friendliness to Ukraine (1–2 June 2023)]*. ratinggroup.ua.
- Rating Group Ukraine. (2022). *Ninth international survey: estimates of international partnership (April 26, 2022). [Ninth international survey: estimates of international partnership (April 26, 2022)]*. ratinggroup.ua.
- Rating Group Ukraine. (2016) *Public Opinion Survey: Residents of Ukraine*. International Republican Institute. ratinggroup.ua
- Razumkov Centre. (2012). *Опитування: чи потрібно Україні вступати до Європейського Союзу? (динаміка, 2002–2012 рр.). [Survey: Does Ukraine need to join the European Union? (dynamics, 2002–2012)]*. https://web.archive.org/web/20160323021301/http://www.razumkov.org.ua/ukr/poll.php?poll_id=387
- Rivkin, A. (2022). *Controversial Ukrainian envoy leaves Germany for Kyiv. Deutsche Welle*. <https://www.dw.com/en/long-serving-ukrainian-ambassador-andrij-melnyk-departs-germany-for-kyiv/a-63451023>
- Sakhno, Iu. (2017). *Геополітичні орієнтації громадян України: вересень 2017 року. [Geopolitical orientations of Ukrainian citizens: September 2017]*. Kyiv International Institute of Sociology. <https://www.kiis.com.ua/?lang=ukr&cat=reports&cid=720&page=1>
- Sektor Pravdy [Sector of Truth]. (n.d.). *About the war from the frontline*. <http://sectorpravdy.com/ua/>
- Semenova, I. (2022). *«Я не буду просити виправдання». Меркель спочатку пояснила «поблажливість Путіну» і блокування курсу України на НАТО, але викрилася в нових протиріччях [“I will not ask for an excuse”. Merkel first explained “the condensation to Putin” and the blockade of Ukraine’s NATO course, but she was exposed in new contradictions]*. NewVoice.ua. <https://nv.ua/ukr/world/countries/angela-merkel-vpershe-vislovilasya-pro-putina-ta-blokadu-kursu-ukrajini-v-nato-ostanni-novini-50248389.html>

- Sharii's Party. (2019). *Party program*. https://centreua.org/vybory2019/pdf_programy/PartiiShariiia.pdf
- Snopok, O. (2023). *Нокаут на телебаченні: як соціальні мережі тримають лідерство в подачі новин українцям*. [Knockout to the television: how the social networks hold leadership in supplying news to Ukrainians]. Ukrainian Pravda. <https://www.pravda.com.ua/columns/2023/08/16/7415807/>
- Starodub, A. (2008). *По різні боки стін церкви*. [On different sides of the church walls]. Ukrainian Pravda. www.pravda.com.ua/articles/2008/03/7/3390048/
- Steinhaus, A. (2022). Das Märchen von der „BRD-Lüge“ [The tale of the “FRG Lie”]. *Rheinische Post*. https://rp-online.de/politik/deutschland/brd-gmbh-verschwoerungstheorie-reichsbuerger-glauben-deutschland-sei-nicht-souveraen_aid-52489437
- Szczerbiak, A., & Taggart, P. (2002). The party politics of Euroscepticism in EU member and candidate states. *SEI Working Paper No.51/Opposing Europe Research Network Working Paper No.6*.
- Taggart, P. (1998). A touchstone of dissent: Euroscepticism in contemporary Western European party systems. *European Journal of Political Research*, 33(3), 363–388. <https://doi.org/10.1080/15705854.2010.503032>
- Taran, O., Zaiats', M. (2022). Комп'ютерний контент-аналіз інтернет-мемів щодо російсько-української війни 2022 року. [Computer-based content analysis of the internet memes regarding the Russia-Ukraine war of 2022]. *Studia Linguistica*, 21, p. 65. http://studia-linguistica.knu.ua/wp-content/uploads/2023/02/Taran_21.pdf
- Troshchyns'ka, T. (2023). *Україна стала моральним авторитетом у світі завдяки своїй збройній силі – Ганна Гонко*. [Ukraine stala moral'nym avtoritetom u sviti zavdiaky ZSU – Hanna Honko]. *Hromads'ke Radio*. <https://hromadske.radio/podcasts/my-ie-buly-y-budem-informatsiynny-maraton/1162897>
- Tyshchenko, K. (2022). *Суд дозволив ув'язнити Януковича за підписання Харківських угод*. [Court allowed imprisonment of Yanukovich on the grounds of signing the Kharkiv agreements]. Ukrainian Pravda. <https://www.pravda.com.ua/news/2022/05/23/7348032/>
- Ukrainian Pravda. (2014) *РФ не може втриматися: ухвалить ще одне рішення щодо заворушень у Києві*. [RF cannot manage itself: it will adopt another decision regarding the Kyiv riots]. pravda.com.ua. <https://www.pravda.com.ua/news/2014/01/21/7010384/>
- Ukraininfo. (2012). *Блок Вітренко - реклама 1. Blok Vitrenko – reklama 1 [Vitrenko Bloc – Ad 1]*. Ukrainian political ad. <https://www.youtube.com/watch?v=hGs18HrFNlw>

- Vasilopoulou, S. (2017). Theory, concepts and research design in the study of Euroscepticism. In B. Leruth, N. Startin, & S. Usherwood (Eds.), *The Routledge Handbook of Euroscepticism* (pp. 22–38). Routledge.
- Vears, D. F., & Gillam, L. (2022). Inductive content analysis: A guide for beginning qualitative researchers. *Focus on Health Professional Education*, 23(1), 111–127.
- Verkhovna Rada of Ukraine. (2010). Law of Ukraine “On Foundations of the Domestic and Foreign Policy”, 2411–17. <http://zakon3.rada.gov.ua/laws/show/2411-17/ed20100701>
- Vyshnevs'kyi, I. (2017). Демографія окремих районів Донецької та Луганської областей/Demografija ORDLO. [*Demographics of the certain areas of Donetsk and Luhansk oblasts*]. DS News. <https://www.dsnews.ua/static/longread/donbas-ukr/demographiya-ordlo.html>
- Your Jupiter. (2022). #bazoniukhy #nimechchyna (#gasbreathers #germany). Tiktok. https://www.tiktok.com/@your_jupiter_/video/7131272303807155462
- Zhegulev, I. (2023). Як Путін почав ненавидіти Україну. [*How Putin started to hate Ukraine*]. Verstka. <https://verstka.media/kak-putin-pridumal-voynu>
- Zhukov, Ie. (2022). Які спогади залишив Андрій Мельник як посол України в ФРН. [Which memories has Andrii Mel'nyk left as an ambassador of Ukraine to FRG]. *Deutsche Welle*. <https://www.dw.com/ru/chem-zapomnitsja-andrej-melnik-za-7-let-prebyvanija-poslom-ukrainy-v-frg/a-62384617>
- Zhyla, N. (2022). Найпопулярніші соціальні мережі в Україні під час війни – дослідження *Global Logic*. [*Most popular social networks in Ukraine during wartime – a Global Logic study*]. Mezha. <https://mezha.media/2022/08/06/naypopuliarnishi-sotsmerezhi-v-ukraini-pid-chas-viyny-doslidzhennia-global-logic/>
- Zolkina, M. (2014). Громадська думка щодо євроінтеграції: нові тренди як шанс консолідації суспільства. [Public opinion on European integration: new trends as a chance for societal consolidation]. In: KIIS., *Eurointegration of Ukrainians: Experience of Neighbours and Perspectives of Consolidating the Society*, 2014. <https://dif.org.ua/uploads/pdf/607572728645823818f7987.01619280.pdf>
- 24th Channel. (2014, 27 June) Шлях України до підписання Угоди про асоціації з ЄС з 1991 року і до сьогодні. [*Ukraine's path towards signing the Association Agreement with the EU: from 1991 to the present days*]. 24tv.ua. https://24tv.ua/shlyah_ukrayini_do_pidpisannya_ugodi_pro_asotsiatsiyu_z_yes_z_1991_i_do_sogodni_n457687

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Sectoral Dynamics and Challenges of Ukraine's Integration Process



European Integration, and Democracy and Human Rights Reforms in Ukraine in the Wartime

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1 INTRODUCTION

On 28 February 2022, 5 days after Russia launched a full-scale, unprovoked, and unjustified aggression against Ukraine, Ukraine submitted its application for membership in the European Union (EU). In March 2022, the Council of the EU requested the European Commission to provide its opinion on Ukraine's application (European Commission, 2022a). The European Commission has concluded that Ukraine has substantially advanced in safeguarding democracy, the rule of law, human rights, and respect for and protection of minorities. On this basis, the Commission recommended that Ukraine be granted candidate status,

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although conditional on several additional reforms, which Ukraine implemented to the EU's satisfaction. In June 2022, Ukraine was granted EU candidate status.

The objective of joining the EU has dominated Ukraine's foreign policy for decades, reaching its climax in 2019 when Ukrainian President Petro Poroshenko signed a constitutional amendment committing the country to become a member of both the North Atlantic Treaty Organization (NATO) and the EU. Officially, Ukraine's position on European integration dates back to 1993 when the government declared it as its primary foreign policy objective (Shyrokykh, 2018).

The act of aggression, grave war crimes, and other alleged conflict-related crimes committed by Russian soldiers in Ukraine pose a significant challenge to international law in general, and international criminal justice, in particular (Wesslau, 2023). The level of destruction and human suffering is unprecedented in post-Cold War Europe (Shalal, 2022; Williamson, 2023). At the same time, contrary to the initial predictions of Ukraine's collapse, its state institutions have not only maintained stability but also, in some cases, evolved implementing important reforms (Dorontseva, 2022; European Commission (EC), 2022a; Harmash, 2023). According to a recent report by the Group of States against Corruption (GRECO) of the Council of Europe, since the full-scale invasion, Ukraine has undergone more anti-corruption reforms than in the past few years (GRECO, 2023).

In this chapter, we explore the process of European integration and reforms, both of which gained momentum amidst the war, while also investigating their inter-relationship. We ask: *To what extent, how, and why does the EU integration accelerate reforms in Ukraine amidst the war?* To address these questions, we examine the progress made in the policy areas of justice, anti-corruption, and gender equality, which have been the focus of long-standing EU-promoted reforms. We address these policy areas as notable achievements have taken place in these domains in the first year and a half of full-scale Russian aggression. Reforms in these policy areas for long have been the least likely to take place as they faced systematic resistance in Ukraine due to different reasons, which we discuss below. We explain how Russia's full-scale invasion has become a catalyst of important transformations in Ukraine and what the role of European integration has played in the process of reforms.

To do that, we draw on compliance scholarship to analyse the effects of the EU's promotion of justice, anti-corruption, and gender equality

reforms in Ukraine, alongside Ukraine's policy response. We cover the period from early 2022, the onset of the Russian Federation's full-scale attack on Ukraine, up to mid-2023, when we concluded our observations. In doing so, we highlight the important role of changing the compliance calculations of political elites in Ukraine, particularly in the challenging context of the ongoing war. Through our analysis, we offer a comprehensive overview of the reforms in the domains of justice, anti-corruption, and gender equality during this turbulent period. Theoretically, we build on the instrumental compliance approach to investigate the extent to which instrumental considerations motivated the Ukrainian government to introduce reforms that were previously seen as "costly". We demonstrate that the war has changed the compliance calculations of domestic elites, making the cost of non-compliance higher than the potential benefits. Thus, the Russian aggression has increased the EU's leverage over Ukraine. We also show limitations of the explanatory power of instrumental compliance demonstrating that there are important reforms that take place due to functional needs in Ukraine as a result of the war.

The chapter is structured as follows. First, we examine the significance of justice, anti-corruption, and gender equality in EU-Ukraine relations. Next, we introduce the theoretical framework and trace the developments in the three domains. Then, we describe changes since the beginning of the full-scale Russian aggression and explain why reforms were possible amidst the war. Finally, we conclude the chapter by outlining the broader implications of our study for the scholarly literature.

2 JUSTICE, ANTI-CORRUPTION, AND GENDER EQUALITY IN EU-UKRAINE RELATIONS

Since the mid-1990s, respect for democracy, human rights, fundamental freedoms, and the rule of law have been consistently emphasised as fundamental requirements for deepening cooperation, as evidenced by their inclusion in agreements such as the Partnership and Cooperation Agreement (PCA) with neighbouring countries, including Ukraine (Shyrokykh, 2017).

Adhering to a set of shared norms and values is of utmost importance for successful European integration, as these principles form the foundation of the EU. Democracy, human rights, fundamental freedoms, and the rule of law are also explicitly mentioned as essential elements in Article

6 of the Association Agreement (AA) between Ukraine and the EU—a document that currently regulates EU-Ukraine relations. In most EU documents, justice and anti-corruption norms fall under the rubric of the rule of law. Gender equality is typically discussed as a part of human rights.

Broadly speaking, the rule of law and human rights are listed among the fundamental values of the EU and play a crucial role in the EU accession process. The EU requires candidate countries to meet certain political and economic conditions, including the establishment of stable institutions that guarantee democracy, the rule of law, and human rights. Thus, in 1993 in Copenhagen the European Council concluded that accession can only take place if a country is able to assume the obligations of membership by satisfying the economic and political conditions required (European Council (EuC), 1993). This is in line with the values enshrined in the Treaty on European Union (TEU), which recognises human dignity, freedom, democracy, equality, the rule of law, and respect for human rights as core values (EuC, 1993). These values are declared “common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail” (TEU, Article 2).

These values hold significance not only for the EU’s internal functioning but also for its external relations. Internationally, the EU has earned recognition for its efforts to promote these norms and values. This global acknowledgement was underscored in 2012 when the EU received the Nobel Peace Prize for advancing the causes of peace, reconciliation, democracy, and human rights in Europe (Norwegian Nobel Committee, 2012).

European integration has been a key foreign policy objective for Ukraine (Shyrokykh, 2017). The beginning of the EU-Ukraine relations dates back to the period following the proclamation of Ukraine’s independence. In 1994, the EU signed a PCA with Ukraine, which entered into force in 1998. Political and economic cooperation was enhanced in 2004 when Ukraine became an EU partner within the European Neighbourhood Policy and further strengthened with the launch of the Eastern Partnership (EaP) initiative in 2009. The EaP sought to foster political

association, economic integration, and support reforms, while concurrently strengthening democratic institutions and the rule of law in Eastern neighbours.¹

As part of its ambition to deepen European integration, Ukraine initiated consultations on the AA in 2007 (see Dragneva & Wolczuk, 2025). The draft AA was proposed in March 2012. Although in 2013 President Yanukovich refused to sign the agreement, which sparked mass protests known as the Revolution of Dignity, Ukraine finally signed it in 2014. Major parts of the agreement have been provisionally applied since then. In September 2017, the AA/Deep and Comprehensive Free Trade Area (DCFTA) fully entered into force (European Commission, 2022a, 2022b, 2022c). The DCFTA is an integral part of the AA, aiming to promote trade liberalisation between the EU and Ukraine by reducing tariffs (EC, n.d.). The AA/DCFTA is considered a milestone in EU-Ukraine relations, and its implementation is crucial for Ukraine's European integration.

In the preamble of the AA, the EU recognised Ukraine's EU aspirations and welcomed its commitment to establishing a strong and lasting democracy and market economy. Today, the agreement is the primary bilateral legal framework for strengthening political relations, promoting shared values, fostering greater economic connections, and advancing cooperation in areas of mutual interest (EC, 2022a). One of the objectives of deepening political and economic cooperation, as stated in the AA, is "to enhance cooperation in the field of justice, freedom and security with the aim of reinforcing the rule of law and respect for human rights and fundamental freedoms" (Association Agreement (AA), article 1e). The rule of law and fundamental freedoms are declared to be the key principles in the cooperation (AA, article 2).

In the domain of justice, freedom, and security, the emphasis is on "the consolidation of the rule of law and the reinforcement of institutions at all levels in the areas of administration in general and law enforcement and the administration of justice in particular" (AA, article

¹ However, as of mid-2022, the EaP seems to have lost its relevance. Moldova and Ukraine have achieved candidacy status and are moving towards a more integrated form of cooperation with the EU, intending to initiate accession negotiations by the end of 2023. Belarus has chosen to withdraw from the initiative due to the sanctions imposed in response to the crackdown on protests in 2020. Meanwhile, Georgia intends to follow a similar path as Moldova and Ukraine in its pursuit of closer integration.

14). Specifically, the cooperation is aimed at “strengthening the judiciary, improving its efficiency, safeguarding its independence and impartiality, and combating corruption” (AA, article 14). Attempts of reforms towards that objective faced major challenges in Ukraine; however, significant improvements have taken place since the full-scale invasion (GRECO, 2023). This presents an interesting empirical puzzle that merits a detailed investigation to explain the extent to which the reforms can be attributed to the process of European integration.

3 INSTRUMENTAL COMPLIANCE WITH EU CONDITIONALITY

To explain the reforms, we build on existing works on compliance and its limitations (e.g., Beach, 2005; Hollyer, 2010; Schimmelfennig et al., 2003; Steunenberg & Dimitrova, 2007). Specifically, we build on the instrumental model of compliance applying it to the case of reforms in Ukraine.

The instrumental model of compliance, as articulated by Schimmelfennig et al. (2003), stresses the costs and benefits of compliance. This model assumes that the effects of conditionality are contingent upon the domestic political costs of compliance. The basic argument of the instrumental approach is that governments comply with EU conditionality after having rationally weighed the costs of compliance against the potential benefits of non-compliance. Compliance is therefore explained by the presence of effective measures to stimulate it by imposing high costs for non-compliance or providing substantial rewards to stimulate the desired behaviour.

For example, Schimmelfennig et al. (2003) introduced the concept of “reinforcement by reward”, asserting that credible material incentives are crucial for stimulating domestic reforms, particularly in contexts that are unfavourable to liberal reforms. Incentives that enhance the welfare, security, or power of the target government are most likely to have a sufficiently strong impact to bring about compliance. In such countries, material incentives create a “lock-in effect” that may eventually lead to the establishment of liberal rules (Schimmelfennig, 2005; Schimmelfennig & Scholtz, 2008; Vachudova, 2005).

Based on the AA/DCFTA, Ukraine has successfully implemented several reforms and aligned its legislation with the EU in numerous areas

(EC, 2022a). Marking a significant milestone in the EU-Ukraine relations, the AA has increased the expectations from Ukrainian authorities. These measures have been seen as potentially contributing to stability, security, and democratic development. Despite significant progress in the implementation of the AA, certain reforms have lagged, and it was only amid the full-scale invasion that they were finally implemented. Notably, reforms in judiciary, anti-corruption, and gender equality reforms are among the most obvious cases. They represent the least likely cases to demonstrate reforms, however, positive changes took place amidst the war. Therefore, the three policy domains constitute the focus of the empirical investigation in this chapter.

We apply the instrumental compliance approach to reforms in the three domains uncovering to what extent they can be linked to European integration and the conditionality attached to it. In doing so, we also demonstrate the limitations of the instrumental compliance approach suggesting domestic factors that stimulate reforms in the context of the war.

3.1 *Anti-Corruption and Judicial Reforms*

In the European Commission's assessment on Ukraine's candidacy status, it has been pointed out that judicial and anti-corruption reforms were the most challenging aspects of the rule of law reforms. The European Commission recommended granting candidacy status conditional upon the fulfilment of seven concrete measures, the majority of which were related to judicial and anti-corruption reforms (EC, 2022b). They were: (1) the selection procedure for judges of the Constitutional Court of Ukraine; (2) the vetting of the candidates for the High Council of Justice members by the Ethics Council and the selection of candidates to establish the High Qualification Commission of Judges of Ukraine; (3) the fight against corruption; completing the appointment of a new head of the Specialised Anti-Corruption Prosecutor's Office and appointment for a new Director of the National Anti-Corruption Bureau of Ukraine; (4) anti-money laundering legislation; plan for the reform of the entire law enforcement sector as part of Ukraine's security environment; (5) implementation of the Anti-Oligarch law to limit the excessive influence of oligarchs; (6) media law and empowerment of the independent media regulator; (7) national minorities protection (EC, 2022b).

In its reports, the EU has consistently addressed concerns pertaining to judicial and anti-corruption reforms in Ukraine. Notably, since the initiation of the AA implementation in 2017, these reforms have encountered the strongest resistance, as indicated in EU progress reports. The Association Implementation reports have recurrently outlined challenges and issues associated with the progress of reforms in these domains. For example, in the first Association Implementation report, it was stressed that reforms aimed at battling high-level corruption were inadequately implemented. In particular, the report emphasised that there was limited progress in the establishment of the new High Anti-Corruption Court, including the selection of judges and its operational functioning (EC, 2018). While the report acknowledged progress in the implementation of the verification of officials' assets declarations, it also highlighted the need for additional efforts to establish a fully functioning verification system. Furthermore, the report stressed that despite previous commitments, an independent supervisory board for the Court had not been established (EC, 2018).

Similarly, in subsequent Association Implementation reports, the role of the Constitutional Court in Ukraine's justice system was underscored as requiring reforms (EC, 2019). This became particularly evident as the Constitutional Court posed challenges to the Anti-Corruption Court (EC, 2022c). Reforming the Constitutional Court was pending and did not cover the selection of judges. Likewise, although efforts were made to recover embezzled funds of almost USD 5.5 billion from Privat Bank before its nationalisation, there was little progress in recovering misappropriated state funds (EC, 2018).

Since the full-scale Russian invasion, Ukraine has reached several important milestones. For example, Ukraine boosted its anti-corruption institutions by transparently appointing new heads of the Specialised Anti-Corruption Prosecutor's Office (SAPO) and the National Anti-Corruption Bureau of Ukraine (NABU). While there is some legitimate criticism of these institutions for their handling of the so-called "reformers" cases,² the general perception of SAPO and NABU as leading

² Also see <https://texty.org.ua/fragments/108855/pidozra-kobolyevu-u-spravi-premiyuvannya-neobgruntovana-rishennya-vaks/>. See also <https://forbes.ua/money/chomu-vipravdannya-nabu-za-peresliduvannya-reformatoriv-nevdali-poyasnyuyut-yuristi-07032023-12206>.

progressive forces³ in the fight against corruption was strengthened following the appointments of their heads.

Another example is the relaunching of the High Council of Justice (HCJ) and the High Qualification Commission of Judges (HQCJ), which was among the conditions for granting Ukraine candidate status put forward by the Commission.⁴ These developments were positively characterised by commentators as a significant success of Ukraine in judicial reform (New Europe Centre, 2023a). Much work remains to be done in this sector, but moving away from the stalemate that paralysed the work of the HCJ and HQCJ is already a success that provides hope for the gradual improvement of judicial independence and efficiency. By adopting the compliance cost perspective, the decision to reactivate HCJ and HQCJ and implement the corresponding recommendations can be seen as bearing fewer costs in comparison to delaying the reform and risking the attainment of candidate status.

Less positive is the situation with the reshaping of the procedure of selecting judges for the Constitutional Court of Ukraine (CCU). The amendments to the Law “On the Constitutional Court of Ukraine”, adopted in November 2022 do not fully align with the opinion of the Venice Commission (VC) and the EU concerning the selection process (Verkhovna Rada of Ukraine (2022a)). The disagreement revolves primarily around the composition and decision-making process of the Advisory Group of Experts (AGE), tasked with supervising the selection of candidates for the CCU. While the amendments promote a 6-member AGE without granting a decisive vote to experts appointed by international actors, both the VC and the EU encouraged Ukraine to establish a 7-member AGE. This configuration would enable internationally endorsed experts to play a role in determining which candidates will be put forward for a vote in Verkhovna Rada as potential judges for

³ See for instance the comments made by the EU, G7 and US officials after these appointments: <https://www.afpc.org/publications/bulletins/ukraine-reform-monitor/ukraine-reform-monitor-no-1>; <https://warsawinstitute.org/ukrainian-cabinet-appoints-new-anti-corruption-chief/>; <https://babel.ua/en/news/82168-the-eu-and-the-usa-welcomed-the-appointment-of-oleksandr-kljmenko-as-the-head-of-the-sap>

⁴ See the EU Commission recommendations here: https://www.eas.europa.eu/delegations/ukraine/eu-commissions-recommendations-ukraines-eu-candidate-status_en?s=232

the CCU.⁵ At the same time, Ukrainian officials have expressed their willingness to work with the comments and suggestions of the international partners and make additional amendments to current legislation to address the concerns of the VC and the EU.⁶

While conditionality serves as a powerful explanatory factor, it does not comprehensively explain all of the anti-corruption and judiciary reforms in Ukraine. Conditionality may well explain reforms that relate to high-level corruption; however, there are also reforms that take place due to practical considerations such as an overwhelming number of war crimes. This is exemplified by an observable paradigm shift within law enforcement agencies and prosecutor's offices. Notably, the Office of the Prosecutor General (OGP) and regional prosecutor's offices are departing from the practice of evaluating a prosecutor's effectiveness based on the number of cases opened. Instead, they are embracing an approach that emphasises the prosecutor's role in safeguarding the rights of communities and individuals. This transition is not yet welcomed by law enforcement agencies that continue to adhere to the outdated practice of tallying registered criminal investigations as a measurement of investigators' effectiveness.

Another example of successful reforms is the new strategic approach to prioritisation of investigations and case management. Confronted with an overwhelming number of reported war crimes allegedly committed since the full-scale Russian invasion, Ukrainian prosecutors had to formulate a new strategy for handling complex multi-episode cases. This strategy needed to encompass various elements, such as utilising case-building and evidence-storing software, prioritising investigations, establishing an investigation plan before initiating inquiries or seeking any information about the episode, and collaborating with non-governmental organisations in the investigation of war crimes, among other measures.

Seemingly technical alternations in the prosecutor's approaches to criminal justice have far-reaching implications for the rule of law. Equipped with these new tools, prosecutors begin to recognise the survivor's role and interests in criminal proceedings. They understand the importance of communicating with civil society and adopt best practices

⁵ For more, see <https://en.dejure.foundation/tpost/7k44bzm8x1-no-independent-ccu-new-draft-law-no-9225>

⁶ For more, see <https://sud.ua/uk/news/publication/270838-my-ne-mozhem-teryat-svoy-suverenitet-pri-opredelenii-poryadka-izbraniya-sudey-ksu-ruslan-stefanchuk-o-rekome-ndatsiyakh-venetsianskoy-komissii>

developed by international courts in areas such as case-building, victim protection, and evidence evaluation. Taken together, these efforts will contribute to establishing a more balanced, transparent, accessible, and reputable criminal justice system in Ukraine.

The aforementioned shifts primarily stem from the pressure exerted on the prosecutors and law enforcement agencies due to the overwhelming number of war crimes. The pressure made it immensely complicated to approach the administration of justice using the old playbook. At the same time, these transformations do not unfold in isolation but are intricately linked to the deepening connections between Western partners and Ukraine. For example, collaboration is established within the Atrocity Crimes Advisory Group (ACA), co-coordinated by the EU together with the UK and the US (European External Action Service Press Team, 2022). The Group “seeks to streamline coordination and communication efforts to ensure best practice, avoid duplication of efforts” of international actors in facilitating “crime scene and forensic investigations, drafting of indictments, collection, and preservation of evidence, operational analysis, investigation of conflict-related sexual violence, and co-operation with international and national accountability mechanisms” (European External Action Service Press Team, 2022). Consequently, it contributes to the change of the justice climate across the Office of the Prosecutor General and police. Another source that promotes the EU’s best practices is the work of the European Advisory Mission (EUAM), one of the contributors to ACA. EUAM works on the development of the prosecutors’ and investigators’ capacity to plan war crimes investigations, conduct crime pattern analysis, investigate sexual violence, and treat victims and witnesses during the investigation with respect and mindfulness of the risks of re-traumatization.⁷

In sum, reforms in the policy areas of the judiciary and anti-corruption can be attributed to two major factors. First, in line with the instrumental compliance approach, the increased reward in the form of candidate status stimulated the government to conduct reforms that target high-level corruption. Second, the practical necessity arising from the overwhelming number of reported alleged war crimes can be identified as a separate reason which triggered significant reforms in the judiciary sector.

⁷ See: <https://www.euam-ukraine.eu/news/latest-news/accountability-for-war-crimes-common-aim-of-all-criminal-justice-actors/>

3.1.1 *Gender Equality*

In the years leading to Russia's full-scale invasion, both the European Commission and the European Parliament highlighted the necessity for more comprehensive gender mainstreaming in Ukraine's legislation and policies (EC, 2022a; European Parliament (EP), 2022). They also stressed the importance of making progress in the ratification of the Istanbul Convention and addressing the general situation with domestic violence.

At the same time, Ukraine has taken several significant steps towards gender mainstreaming, although certain reforms have only been initiated since the full-scale war. In 2018, the Government of Ukraine approved the National Action Plan for implementing the recommendations provided in the concluding observations by the Committee on the Elimination of Discrimination against Women (CEDAW) (UN, 2020). Among the important steps, Ukraine amended the definition of rape in its Criminal Code in 2019, making it gender-neutral (Criminal Code of Ukraine, article 152). In doing so, the country has expanded the avenues for a more sensitive response to sexual violence against individuals of both genders and non-binary people.

Furthermore, the office of the Government Commissioner for Gender Equality Policy was established in early 2018. Notably, the professional who became the Government Commissioner was selected from civil society. She had worked for over a decade with *La Strada*, a leading Ukrainian NGO that advocates for women's rights and addresses issues related to domestic violence.⁸ This appointment has been important for at least two reasons. First, it has reinforced the trend of civil society leaders entering public service to drive change from within and accelerate Ukraine's democratic transformation. For instance, starting off as a civil society member and then as a public official, the new Government Commissioner played a crucial role in advancing Ukraine's first National Action Plans on Women, Peace, and Security Agenda in 2016 and 2020 (Verkhovna Rada of Ukraine, 2022b). Second, this collaboration between civil society and government has become particularly essential since 2022, with the full-scale invasion requiring innovative approaches and their swift implementation. In this context, the Ukrainian government, prompted by the Government Commissioner for Gender Equality Policy, acted

⁸ For more, see <https://www.dcaf.ch/ssgr-champions-meet-kateryna-levchenko>

promptly to adopt the National Action Plan on Women, Peace, and Security National to address the new challenges arising from the full-scale invasion (Verkhovna Rada of Ukraine, 2022c).

Moreover, in April 2018, a State Social Programme on Equal Rights and Opportunities for 2018–2021 was endorsed. The programme aimed to reinforce institutional mechanisms and implement an integrated approach to enhance gender equality in all areas of public life in Ukraine (EC, 2018). In 2020, Ukraine joined the Biarritz Partnership endorsed by the G7 countries, focusing on aspects such as inclusion, gender equality in work and education, and combating gender-based violence (EC, 2022c).

Despite the notable progress, in 2022, the European Parliament identified persisting gaps in gender equality policies, urging for a mainstreaming of gender equality into both Ukrainian legislation and practice (EP, 2022). In its 2022 Opinion on Ukraine's EU membership application, the European Commission specifically noted the lack of progress on ratification of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention) (EC, 2022a). The Istanbul Convention is arguably the most far-reaching international treaty specifically designed to tackle violence against women and domestic violence. It sets out standards for governments in Europe on the prevention and prosecution of violence against women and domestic violence and the protection of women. In May 2023, the EU itself made a historic decision to join the Istanbul Convention, in addition to most of its member states' participation in this Council of Europe instrument (EP, 2023).

For more than a decade, the ratification of the convention was the most challenging hurdle in Ukraine's gender equality reforms, encountering political reluctance and active opposition from conservative segments of society. The breakthrough for ratification only materialised during the full-scale war, with Ukraine ratifying the Istanbul Convention in June 2022. The ratification was seen as a "historic victory for women's rights in Ukraine, and a contribution to the change in culture, attitudes, and behaviours towards gender-based violence" (Amnesty International, 2022). The complete ratification and implementation of the Istanbul Convention hold significant importance for Ukraine for four primary reasons. Firstly, the COVID-19 lockdown and subsequent economic challenges have exacerbated the domestic violence dynamics in Ukraine, like elsewhere in the world. According to the Prosecutor General, in 2020,

domestic violence cases increased by 50%, with 86% of reports coming from women, 12% from men, and 2% from children (Kanaryan, 2021).

Second, the Istanbul Convention has a layered understanding of domestic violence, which includes sexual and various forms of physical violence, alongside psychological or economic harm, threats, coercion, and arbitrary deprivation of liberty, perpetrated in public or private life (Istanbul Convention, Article 3(a)). In responding promptly to domestic violence incidents and conducting broader awareness campaigns, it is imperative for Ukraine to highlight that domestic abuse is not limited to a sexual domain and can include psychological and economic aspects. All these aspects are particularly relevant amid the post-pandemic impoverishment and hardships generated by Russia's full-scale invasion.

Third, sensitised advocacy and the domestic implementation of the Istanbul Convention standards will underline that domestic violence disproportionately affects women. However, these steps will also uncover instances where men and non-binary individuals of all age groups are victims as well. Recognising and addressing, in a sensitive, victim-centred manner, this broader perspective of affected individuals is particularly relevant amid conflict-related sexual violence accompanying Russia's all-out invasion of Ukraine (UN Commission of Inquiry on Ukraine, 2023, paras 74–75, 78–85). Finally, Ukraine's ratification and implementation of the Istanbul Convention have consistently been viewed as a way to support victims of domestic violence, reinforce Kyiv's commitment to human rights, and a step forward on its path to EU integration (Slavinska, 2022).

Several factors have accelerated the long-overdue ratification process, with EU conditionality emerging as a significant catalyst. While Kyiv signed the Convention in 2011, the ratification process has remained stalled for more than 10 years (Slavinska, 2022). In 2016, an initial effort to ratify the Convention failed to gain enough support from Ukrainian Members of Parliament (MPs). Some MPs cited concerns expressed by religious organisations, such as the Council of Churches, about the inclusion of the term “gender” in the Convention's text. Such opponents of the instrument were cautious that the notion of “gender” might be further interpreted to promote same-sex marriages (Busol, 2020).

These dynamics exposed uneasiness within and misconceptions of certain conservative factions of Ukrainian society regarding evolving perspectives on gender matters. This raised concerns among MPs who

feared that supporting progressive legislation might impact their electoral support. It was commonly believed that some conservative segments of Ukrainian society prioritised their opposition to progressive gender issues over Ukraine's European integration. The MPs' reluctance to ratify the Istanbul Convention could be attributed to their fear of losing the support of their base (European Pravda, 2022). Thus, for more than a decade, compliance costs were seen as higher than non-compliance costs. The example of other Eastern Partners demonstrated that the cost of compliance is not as high as it was feared by MPs (European Pravda, 2022). For instance, in 2017, Georgia ratified the Convention, and despite some dissatisfaction among the church leaders, the Parliament quickly went through with the procedure without apparent electoral consequences (European Pravda, 2022). Similarly, Moldova ratified the Convention in early 2022 and eventually, after a few months, church officials refrained from mentioning it.

In Ukraine, even amid the full-scale invasion, conservative segments of Ukrainian society attempted to obstruct the ratification. As a result, President Zelenskyy proposed to ratify the Convention "with restrictions," aiming to address the concerns raised by the All-Ukrainian Council of Churches. Such a solution was earlier implemented in Croatia where the Orthodox church attempted to hinder the process of European integration before the country's accession. Similar challenges with the ratification of the Convention have been encountered by other Eastern European countries, reflected in the fact that six EU member states, namely Bulgaria, the Czech Republic, Hungary, Lithuania, Latvia, and Slovakia, have not ratified the Convention.

Like in the case of anti-corruption and judiciary reforms, reforms in the domain of gender equality are a result of two factors, with conditionality being one of them. Additionally, gender equality reforms are triggered by domestic practical necessity and are, at large, driven by civil society. The mentioned spike in domestic violence cases amid the global pandemic and lockdowns has reinforced civil society's demands for a more robust domestic prevention and response framework. The Ukrainian Women Lawyers Association and La Strada have been among the most vocal voices calling for change (Busol, 2020). Ukraine's Prosecutor General, the first woman to hold the position at the time, declared that combating domestic violence was one of her office's top priorities, and the President received petitions demanding the Istanbul Convention's ratification (Kanaryan, 2021). Furthermore, in the wake of Russia's full-scale invasion

and ensuing horrific conflict-related sexual violence (UN Human Rights Council, 2023, paras 7–8), Ukraine’s non-ratification of the Istanbul Convention appeared as inaction in the domain where the government could ensure change.

Finally, and crucially, in line with the instrumental compliance approach, Kyiv’s ratification of the treaty reinforces its commitment to the rule of law and human rights. These elements are instrumental for Ukraine’s accession to the EU. The decision for and the consequences of Ukraine’s ratification were discussed as a necessary step in the process towards obtaining EU candidate status (European Pravda, 2022). For example, on June 11, 2022, President Zelenskyy presented a package of bills to European Commission President Ursula von der Leyen to demonstrate Ukraine’s readiness for reform, including the ratification of the Istanbul Convention. Likewise, the ratification vote in Verkhovna Rada was also seen by the Ukrainian society as a test for MPs’ “Europeanness” (European Pravda, 2022).

In 2023, amid the mass atrocities and other challenges brought about by Russia’s full-scale invasion, Ukraine is accelerating its efforts to promote gender equality. In June 2023, a Ukrainian professional became a member of GREVIO—the independent expert body responsible for monitoring the implementation of the Council of Europe’s Istanbul Convention against domestic violence. In August 2023, Ukraine’s Parliament approved legislative amendments to its Family Code in the first hearing, allowing for divorce during pregnancy and within the first year of a new-born’s life. These more nuanced steps still require additional advocacy to help the wider public understand how limitations on divorce can potentially endanger pregnant women and their foetuses or new-born babies, rather than providing the idealised emotional and financial security of a marriage.

Despite similar regional dynamics and lingering concerns within certain segments of Ukrainian society, the ratification of the Istanbul Convention and gradual gender sensitisation of domestic legislation stand as important milestones. These developments have resulted from several factors: practical needs arising from the global pandemic and conflict-related sexual violence, a strong civil society, lessons learned from regional developments, and the process of European integration.

4 EXPLAINING REFORMS AMIDST THE WAR: INSTRUMENTAL COMPLIANCE AND ITS LIMITATIONS

Existing studies on compliance take into consideration two main factors: domestic dynamics and the size of material incentives provided by the EU (Schimmelfennig, 2005; Shyrokykh, 2022; Vachudova, 2005). Literature focuses on compliance in the context of relative stability. The empirical analysis presented in this chapter demonstrates that major international shocks and turbulences can alter the compliance calculations of governments in a relatively short period. As demonstrated by the example of the Russian full-scale invasion, changes in the international context in which domestic decisions are made may alter compliance calculations. We reveal that security threats played a significant role in compliance calculations in various policy areas in Ukraine, resulting in a profound impact on the country's decision-making and policy choices.

Posing multiple challenges, the full-scale war created conditions under which the EU's leverage has increased. This has stimulated conditionality compliance by Ukraine. European integration in the context of the war is more than just about economic development; it is also a matter of state survival. The EU is the major financial donor helping to keep Ukraine's economy afloat, welcoming displaced Ukrainians, and providing humanitarian assistance for those who stayed. Thus, the incentive that the EU provides is not only enhanced welfare, but also security, economic stability, and to some extent physical survival.

Russia's invasion also has significant implications for Ukraine's foreign policy and its relationship with the EU. First, as Ukraine faces an existential threat as a result of Russia's genocidal war aimed at eradicating the Ukrainian political nation, Euro-Atlantic integration is seen as the only viable path for Ukraine's foreign policy, development, and peace (Kholodnova, 2022; Zelenskyy, 2023). To further integrate with the EU, reforms are essential and widely recognised (Zelenskyy, 2023). Reforms that were previously considered "costly" for influential veto players and therefore met resistance have now become possible due to the change in compliance calculations (European Pravda, 2023).

Since 2014, and even more so since 2022, Russia has ceased to be a viable "alternative" to the EU. Traditionally, political actors in Ukraine who opposed integration with Western institutions suggested either closer ties with Russia or the so-called multi-vector foreign policy, which aimed to accommodate integration with both the West and Russia (Shyrokykh,

2018). Since February 24, 2022, European integration has become the sole foreign policy option, with no alternative. As a result, the EU's leverage over Ukraine has increased.

Currently, Ukraine's foreign policy objectives of deeper integration with Western institutions such as the EU and NATO are uncontested. Some suggest that until 2014, Ukraine's progress in European integration was hindered by a lack of a unified idea that Ukraine should align with the West, which led to uncertainty regarding the country's foreign policy direction (Klimkin & Mikloš, 2023). Sections of the population were pro-Western, especially younger and urban populations. Meanwhile, older and rural populations preferred closer cooperation with Russia. An important role was also played by economic and political elites, who had an interest in the continuation of old practices and cheap gas for their businesses (Dimitrova & Dragneva, 2013). However, since the occupation of Crimea in 2014 and the beginning of the war in Eastern Ukraine, and particularly since the full-scale invasion, European integration has gained significant support among Ukrainian citizens. For instance, among international organisations, the EU is the most trusted organisation, with 84% of Ukrainian citizens expressing their confidence in the EU (New Europe Centre, 2023a). The EU and its promotion of reforms are also considered legitimate, as 73% of citizens approve of the EU's conditionality attached to the opening of enlargement negotiations with Ukraine (Fakhurdinova, 2023). Furthermore, EU accession in itself is not the primary purpose. Instead, there is an understanding that the reforms conducted during the accession process will yield positive outcomes. Approximately half of the citizens believe that these reforms will primarily benefit Ukraine. More than half of the population (61%) supports the EU's pressure on Ukraine regarding anti-corruption reforms, while only 19.5% believe that it is not the main issue at present (New Europe Centre, 2023b).

At the same time, not all the reforms can be explained by European integration. As demonstrated in the previous section, the war itself presents challenges that require reforms for the efficient investigation of alleged war crimes and the protection of victims. Inefficient old practices of investigations and case management, along with underdeveloped approaches to the investigation of gender-based violence during armed conflicts and domestic violence, were exacerbated by the war. Reforms are needed for the related state institutions to fulfil their functions in the face of a full-scale war. Additionally, reforms are also necessary to enable sustainable reconstruction and investments in the post-war

context (Klimkin & Mikloš, 2023; Shyrokykh & Melen-Zabramna, *in this volume*). Ukraine's reconstruction necessitates substantial official resources and private foreign direct investment to ensure success. To secure these, Ukraine must prioritise the improvement of law enforcement, property rights, and the strengthening of the judiciary.

5 CONCLUSIONS

In this chapter, we examined two parallel processes in Ukraine that have accelerated since Russia's full-scale invasion: the process of European integration and Ukraine's domestic reforms. We investigated their inter-relationship and asked: *To what extent, how, and why does the EU integration accelerate reforms in Ukraine amidst the war?* We answered these questions by building on three key policy areas: anti-corruption judiciary, and gender equality.

Drawing on the instrumental compliance approach, we showed that reforms were enabled by the change in compliance calculations of domestic elites and increased leverage of the EU. The context of the war compelled political elites to reassess their compliance calculations. This is particularly visible in the anti-corruption reforms that targeted high-level corruption. At the same time, not all the reforms can be linked to European integration. Instead, the practical needs in the context of the war drive a substantial part of reforms in Ukraine. For example, efficient investigation of a very high number of alleged war crimes and the protection of victims demands novel approaches to justice and gender policy. We demonstrated that despite the horrors of the war, the Russian full-scale invasion of Ukraine served as a catalyst for reforms in these three aforementioned key policy areas.

REFERENCES

- Amnesty International. (2022). Ukraine: "Historic victory for women's rights" as Istanbul Convention ratified. <https://www.amnesty.org/en/latest/news/2022/06/ukraine-historic-victory-for-womens-rights-as-istanbul-convention-ratified/>
- Beach, D. (2005). Why governments comply: An integrative compliance model that bridges the gap between instrumental and normative models of compliance. *Journal of European Public Policy*, 12(1), 113–142. <https://doi.org/10.1080/1350176042000311934>

- Bond, I. (2022). *Judy asks: Will distrust among EU leaders fail Ukraine?* Carnegie Europe. <https://carnegieeurope.eu/strategieurope/87342>
- Busol, K. (2020). *Domestic violence in Ukraine: Lessons from COVID-19*. Chatham House. <https://www.chathamhouse.org/2020/07/domestic-violence-ukraine-lessons-covid-19>
- Busol, K. (2022). If Ukraine's fate is not a menu à la carte, then Ukrainian voices must be heard. *Ejil Talk*. <https://www.ejiltalk.org/if-ukraines-fate-is-not-a-menu-a-la-carte-then-ukrainian-voices-must-be-heard/>
- Dimitrova, A., & Dragneva, R. (2013). Shaping convergence with the EU in foreign policy and state aid in post-Orange Ukraine: Weak external incentives, powerful veto players. *Europe-Asia Studies*, 65(4), 658–681. <https://doi.org/10.1080/09668136.2013.766040>
- Dorontseva, Y. (2022). *Reforms in the war year: nine areas that underwent the most change in 2022*. Vox Ukraine. <https://voxukraine.org/en/reforms-in-the-war-year-nine-areas-that-underwent-the-most-change-in-2022>.
- Dragneva, R., & Wolczuk, K. (2025). Integration and modernisation: EU's Association Agreement with Ukraine. In M. Rabinovych & A. Pintsch (Eds.), *Ukraine's thorny path to the EU: From "integration without membership" to "integration through war."* London: Palgrave Macmillan.
- Duff, A. (2022). Ukraine isn't ready for EU membership — the EU isn't ready for it either. *Politico*. <https://www.politico.eu/article/ukraine-isnt-ready-for-eu-membership-the-eu-isnt-ready-for-it-either/>
- European Commission. (2018). *Association implementation report on Ukraine*. Brussels. https://www.ecoi.net/en/file/local/1455671/1226_1546250670_2018-association-implementation-report-on-ukraine.pdf
- European Commission. (2019). *Association implementation report on Ukraine*. Brussels. https://www.europarl.europa.eu/doceo/document/A-9-2020-0219_EN.html
- European Commission. (2022a). *Commission Opinion on Ukraine's application for membership of the European Union*. Brussels. <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52022DC0407>
- European Commission. (2022b). *EU Commission's Recommendations for Ukraine's EU candidate status*. Brussels. https://www.ecas.europa.eu/delegations/ukraine/eu-commissions-recommendations-ukraines-eu-candidate-status_en?s=232
- European Commission. (2022c). *Association Implementation Report on Ukraine*. Brussels. <https://www.ecas.europa.eu/sites/default/files/documents/Association%20Implementation%20Report%20on%20Ukraine%20-%20Joint%20staff%20working%20document.pdf>
- European Commission. (n.d.). *EU-Georgia Deep and Comprehensive Free Trade Area*. Brussels. <https://trade.ec.europa.eu/access-to-markets/en/content/eu-georgia-deep-and-comprehensive-free-trade-area>

- European Council. (1993). *Presidency Conclusions. Relations with the countries of Central and Eastern Europe*. Brussels. https://www.europarl.europa.eu/enlargement/ec/cop_en.htm
- European External Action Service. (2022). *Questions and Answers: Atrocity Crimes Advisory Group (ACA) for Ukraine*. https://www.eeas.europa.eu/eeas/questions-and-answers-atrocity-crimes-advisory-group-aca-ukraine_en
- European Parliament. (2022). *Report on the implementation of the EU Association Agreement with Ukraine*. https://www.europarl.europa.eu/doceo/document/A-9-2020-0219_EN.html
- European Parliament. (2023). *Combating violence against women: MEPs back EU accession to Istanbul Convention*. <https://www.europarl.europa.eu/news/en/press-room/20230505IPR85009/combating-violence-against-women-meps-back-eu-accession-to-istanbul-convention>
- European Pravda. (2022). *Why Ukrainian MPs afraid of the Istanbul Convention*. [eurointegration.com.ua https://www.eurointegration.com.ua/eng/news/2022/06/20/7141613/](https://www.eurointegration.com.ua/eng/news/2022/06/20/7141613/)
- European Pravda. (2023, 24 March). *How the big war became a stimulus for anti-corruption reforms in Ukraine*. [eurointegration.com.ua https://www.eurointegration.com.ua/news/2023/03/24/7158602/](https://www.eurointegration.com.ua/news/2023/03/24/7158602/)
- Fakhurdinova, M. (2023). Yes to reforms, no to NATO concessions: How the big war changed Ukrainians' stance. *European Pravda*. <https://www.eurointegration.com.ua/articles/2023/01/12/7153983/>
- Gorobets, K. (2022). *Russian "Special Military Operation" and the Language of Empire*. Opinion. <http://opiniojuris.org/2022/05/24/russian-special-military-operation-and-the-language-of-empire/>
- Group of States against Corruption (GRECO). (2023). *Corruption prevention in respect of members of parliament, judges and prosecutors. Interim compliance report - Ukraine*. <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680aaa790>
- Harmash, O. (2023, 30 March). Ukraine central bank presses on with reform despite war. *Reuters*. <https://www.reuters.com/markets/europe/ukraine-central-bank-presses-with-reform-despite-war-2023-03-30/>
- Hollyer, J. R. (2010). Conditionality, compliance, and domestic interests: State capture and EU accession policy. *The Review of International Organizations*, 5, 387–431. <https://doi.org/10.1007/s11558-010-9085-2>
- Inman, P. (2022). Ukraine needs 'radical' reform to sustain war effort, warn economists. *The Guardian*. <https://www.theguardian.com/world/2022/sep/09/ukraine-needs-radical-reform-to-sustain-war-effort-warn-economists>
- Kanaryan L. (2021, April 9). *Prosecutor general names combating domestic violence priority in 2021*. UNIAN. <https://www.unian.info/society/domestic-violence-prosecutor-general-names-combating-abuse-priority-in-2021-11382649.html>

- Kholodnova, A. (2022). *Zelensky: There are no alternatives to Ukraine's membership in the European Union*. Babel. <https://babel.ua/en/news/79549-zelensky-there-are-no-alternatives-to-ukraine-s-membership-in-the-european-union>.
- Klimkin, P. & Mikloš, I. (2023). *Why Ukraine delayed integration and reforms. And why it's high time to get serious*. The Centre for Economic Policy Research. <https://cepr.org/voxeu/columns/why-ukraine-delayed-integration-and-reforms-and-why-its-high-time-get-serious>
- New Europe Centre. (2023). *What Ukrainians think about Ukraine's movement towards EU membership – survey*. <http://neweurope.org.ua/en/analytics/yevropejska-integratsiya-voyennogo-chasu-shho-dumayut-ukrayintsi-pro-ruh-ukrayiny-do-yes/>
- New Europe Centre. (2023). *Candidate Check-4: Where Ukraine is in the implementation of EU recommendations*. <http://neweurope.org.ua/en/analytics/kandydat-check-4-de-ukrayina-perebuyaye-u-vykonanni-7-rekomendatsij-yes/>
- Norwegian Nobel Committee. (2012). The Nobel Peace Prize 2012. <https://www.nobelprize.org/prizes/peace/2012/summary/>
- Schimmelfennig, F. (2005). Strategic calculation and international socialization: Membership incentives, party constellations, and sustained compliance in Central and Eastern Europe. *International Organization*, 59(4), 827–860. <https://doi.org/10.1017/S0020818305050290>
- Schimmelfennig, F., Engert, S., & Knobel, H. (2003). Cost, commitment and compliance: The impact of EU democratic conditionality on Latvia, Slovakia and Turkey. *Journal of Common Market Studies*, 41(3), 495–518. <https://doi.org/10.1111/1468-5965.00432>
- Schimmelfennig, F., & Scholtz, H. (2008). EU democracy promotion in the European Neighbourhood: Political conditionality, economic development and transnational exchange. *European Union Politics*, 9(2), 187–215. <https://doi.org/10.1177/1465116508089085>
- Shalal, A. (2022). *Rebuilding Ukraine after Russian invasion may cost \$350 bln, experts say*. Reuters. <https://www.reuters.com/world/europe/russian-invasion-ukraine-caused-over-97-bln-damages-report-2022-09-09/>
- Shyrokykh, K. (2017). *Roads to human rights: Assessing the effects of European Union's instruments of human rights promotion on the post-Soviet states*. [Doctoral dissertation Ludwig-Maximilian University Munich].
- Shyrokykh, K. (2018). The evolution of the foreign policy of Ukraine: External actors and domestic factors. *Europe-Asia Studies*, 70(5), 832–850. <https://doi.org/10.1080/09668136.2018.1479734>
- Shyrokykh, K. (2022). Human rights sanctions and the role of black knights: Evidence from the EU's post-Soviet neighbours. *Journal of European Integration*, 44(3), 429–449. <https://doi.org/10.1080/07036337.2021.1908278>

- Shyrokykh, K., & Melen-Zabramna, O. (2025). Europeanization of Ukraine's policy on environment and climate: Instrumental and anticipatory compliance. In M. Rabinovych & A. Pintsch (Eds.), *Ukraine's thorny path to the EU: From "integration without membership" to "integration through war."* London: Palgrave Macmillan.
- Slavinska, I. (2022) "Historic victory for women's rights": Ukraine ratifies Istanbul Convention. Atlantic Council. <https://www.atlanticcouncil.org/blogs/ukrainealert/historic-victory-for-womens-rights-ukraine-ratifies-istanbul-convention/>
- Snyder, T. (2022, April 28). The war in Ukraine is a colonial war. *The New Yorker*. <https://www.newyorker.com/news/essay/the-war-in-ukraine-is-a-colonial-war>
- Steunenberg, B., & Dimitrova, A. L. (2007). Compliance in the EU enlargement process: The limits of conditionality. *EIoP*, 11(5).
- United Nations. (2020). *Official UN Ukraine Statement on Ratification of the Istanbul Convention*. <https://ukraine.un.org/en/105055-official-un-ukraine-statement-ratification-istanbul-convention>
- United Nations Commission of Inquiry on Ukraine. (2023). *Independent International Commission of Inquiry on Ukraine*. A/78/40. <https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/coiukraine/A-78-540-AEV.pdf>
- United Nations Human Rights Council. (2023). *Report of the Independent International Commission of Inquiry on Ukraine*. A/HRC/52/62. https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/coiukraine/A_HRC_52_62_AUV_EN.pdf
- Vachudova, M. A. (2005). *Europe undivided: Democracy, leverage, and integration after communism*. Oxford University Press.
- Verkhovna Rada of Ukraine. (2022a). *Порядок відбору кандидатів на посаду судді Конституційного Суду. [The procedure of selecting candidates for the position of the Constitutional Court judge]*. <https://zakon.rada.gov.ua/laws/show/2846-20#n84>
- Verkhovna Rada of Ukraine. (2022b). *Resolution of the Cabinet of Ministers of Ukraine №113-pof 24.02.2016. Approving the National Action Plan on the Implementation of the UNSC Resolution 1325 Women, Peace and Security until 2020*. <https://zakon.rada.gov.ua/laws/show/113-2016-%D1%80#Text>
- Verkhovna Rada of Ukraine. (2022c). *Resolution of the Cabinet of Ministers of Ukraine №1544-pof 28.10.2020. Approving the National Action Plan on the Implementation of the UNSC Resolution 1325 Women, Peace and Security until 2025*. <https://zakon.rada.gov.ua/laws/show/1544-2020-%D1%80#Text>
- Wesslau, F. (2023, February 23). *A tribunal like no other: Prosecuting Russia's crime of aggression in Ukraine*. European Council

- of Foreign Relations. <https://ecfr.eu/article/a-tribunal-like-no-other-prosecuting-russias-crime-of-aggression-in-ukraine/>
- Williamson, H. (2023). *Ukraine: Human cost of brutal Russian invasion*. Human Rights Watch. <https://www.hrw.org/news/2023/02/24/ukraine-human-cost-brutal-russian-invasion>
- Zelensky, V. (2023, January 31). *We are preparing new reforms in Ukraine that will change the social, legal and political reality*. President of Ukraine. <https://www.president.gov.ua/en/news/gotuyemo-novi-reformi-v-ukrayini-yaki-zminyaty-socialno-pravo-80701>

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Legal Aspects of EU-Ukraine Bilateral Trade Relations During the Full-Scale War: More Trade Liberalisation, but Under Conditions

Nataliya Haletska

1 INTRODUCTION

Following the execution and entry into force of the Association Agreement (AA) (EU-Ukraine, 2014), Ukrainian exporters have started to increase exports to the EU, while this transition has not been an easy task. As pointed out by Rabinovych, the reorientation of Ukraine's trade from Russia and CIS countries has been a challenge coupled with the war in Eastern Ukraine and exacerbated by the COVID-19 pandemic as well as supply-chain challenges (Rabinovych, 2022; see also Dabrowski et al., 2020).

The full-scale invasion of the Russian Federation on the 24 February 2022 has further magnified the negative impact on EU-Ukraine's trade flows due to the destruction of production facilities, mining of arable lands as well as movement and emigration of workforce. Particularly, seaports have been closed for the use due to the missiles attack, as well as the majority of border checkpoints. This leaves the checkpoints in the western border of Ukraine with EU member states and the Republic of

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Moldova as the only routes to export and import goods. The real-time Interactive map of the State Border Service of Ukraine (2023)¹ demonstrates that border checkpoints with Russia, Belarus, and some points with Moldova (Transnistria region) are not operating, as well as the majority of seaports have been closed due to the war. It is clearly visible that the majority of open border checkpoints are located at the western border of Ukraine. However, according to the Border Inspection Checkpoints Map developed by the EU4SaferFood Project² not all open border checkpoints can serve as sanitary and phytosanitary inspections points, which further decreases volumes of exports and makes it hardly possible to substitute seaports, though the EU has made an effort by initiating the technical aid project “Solidarity Lanes” aiming at simplification of land routes for exports from Ukraine through EU to the rest of the world (European Commission, 2022a). Ukrainian government together with Turkish government has initiated the Black Sea grain initiative, but it was not operating for a long time.

The full-scale invasion has significantly affected EU-Ukraine trade relations. The regulatory responses have been produced at the EU-Ukraine bilateral level by amending the AA, at the EU level and at the unilateral level, as both Ukraine and EU member states have undertaken certain measures. The full-scale invasion had changed the pace of the implementation of the Association Agreement, specifically the DCFTA. Moreover, it had a broader impact on the EU member states, which resulted in adopting unilateral trade measures.

Hence, the research question of this chapter is how the war affected the regulatory frameworks of EU-Ukraine trade. This chapter researches the issue from the legal point of view, particularly, how legal regulation of EU-Ukraine trade relations has changed because of the war. This analysis can serve as a foundation for the evaluation of the adopted decisions and potentially shape the future choice of legal instruments and regulatory responses. Finally, it can serve as a case study for other countries in conflict and their trade partners and potentially provide some assistance to all actors on how to continue trade, deepen trade liberalisation and support

¹ For the Interactive map, provided the State Border Service of Ukraine, please visit <https://dpsu.gov.ua/ua/map/>.

² EU4SaferFood according to the State Food Safety Service of Ukraine. <https://www.facebook.com/eu4saferfood/photos/pb.100076607185360.-2207520000./538765371084214/?type=3>.

the economies during the conflict. The chapter uses the method of legal analysis. It evaluates all legal measures which have been taken from the standpoint of their legal force and compatibility with other legal instruments regulating EU-Ukraine bilateral trade. Hence, it will also suggest a number of legal instruments which can continue the trend for the trade liberalisation of EU-Ukraine bilateral trade. Several literature strands have been analysed in order to address the research question: (1) studies on the impact of war on trade regulations including some literature relating to the trade relations between EU and former Yugoslavia countries and (2) literature relating to the implementation of EU-Ukraine AA/DCFTA and EU-Ukraine trade.

Usually, the issue of the impact of war or conflict on the international trade regulation from a legal standpoint is studied from the perspective of how the conclusion of the regional trade agreements can promote peace and prosperity (Martin et al., 2012; Polachek, 1980). There are also some studies describing trading conditions among parties in conflict (Elagraa et al., 2014). Some studies provide information on trade relations between a country in a civil war and its trading partners.³

There has been a number of studies on economic and legal aspects of the AA's implementation, for example explorations and fact-finding performed by the European Commission (EUROSTAT, 2023), Kyiv School of Economics Trade (Taran, 2020; Taran et al., 2022) and other scholars (Kryvetska, 2022; Naumenko et al., 2023; Petrov et al., 2015; Pintsch & Rabinovych, 2023; Rabinovych, 2022; Ruta, 2022). However, apart from few studies (Kryvetska, 2022; Pintsch & Rabinovych, 2023; Ruta, 2022; Van Elsuwege, 2025), there is not much literature on the issue of how countries under unprovoked aggression regulate their trade relations.

In this chapter it is argued that the war has led to the deepening of EU-Ukraine bilateral trade liberalisation, however such liberalisation is temporary, conditional, and unilateral. Secondly, trade liberalisation measures were adopted at different levels, which created contradictions between them. Finally, it is suggested that a comprehensive update of the AA can ensure further bilateral and permanent EU-Ukraine trade liberalisation on Ukraine's path to EU membership.

³ For example, many positions of Syria's trading partners may be found on the official websites, like the EU position: https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/syria_en.

The chapter is divided into introduction, five sections, and conclusions. Section 1 examines changes in the EU-Ukraine trade relations after the 24th of February from a legal standpoint at the bilateral level. Section 2 deals with measures adopted at the EU level and Sects. 3 and 4 analyse measures undertaken by EU member states and Ukraine respectively. Section 5 suggests that a comprehensive update of the AA can contribute to further trade liberalisation and among others can include provisions on market access, transit, and transportation as well as green recovery.

2 CHANGES AT THE EU-UKRAINE BILATERAL LEVEL

There has been a number of changes at the EU-Ukraine bilateral level, which can be divided into three categories: (a) those that would have taken place anyway, even without the full-scale invasion (amendments to the AA); (b) those, that took place due to the full-scale invasion (arguably (1) granting Ukraine the EU candidate country status, and (2) execution of the Agreement on the Carriage of Freight by Road (hereinafter—Road Agreement)) and (c) those that would have taken place without the invasion but were arguably stopped by it (e.g., the conclusion of Agreement on Conformity Assessment and Acceptance of Industrial Products (ACAA)). The first and the second group of the abovementioned changes have led to the liberalisation of bilateral trade. At the same time, the bilateral trade could have been further liberalised if planned bilateral liberalisation measures had not been postponed due to the war.

With respect to the first group of changes it is worth pointing out that the AA had been amended eight times since its entry into force, usually, the DCFTA part. The latest, and so far only change that has been made after the full-scale invasion, concerns customs legislation approximation and further improvement of customs procedures. Particularly, the EU-Ukraine Association Committee in Trade Configuration has adopted the Decision No 1/2022 as of 25 October 2022 as regards the update of Annex XV (Approximation of customs legislation) to the AA [2022/2286] (hereinafter—Decision on Customs Legislation). According to the preamble of the above-mentioned Decision, the update of the Annex was necessary as specified in the para 5 of the preamble due to the fact that “the Union *acquis* listed in Annex XV (Approximation of customs legislation) to the Agreement substantially evolved since the conclusion of the negotiations on the Agreement” (EU-Ukraine, 2022a). On the other hand, due to the full-scale invasion and limited number of border

checkpoints the update of the Annex XV was also necessary to harmonise customs formalities and further speed up the clearance of goods via the border, which was not mentioned in the preamble of the Decision.

Specifically, the following changes have been made: approximation of Ukraine's legislation to the Union Customs Code, accession to the Convention of 20 May 1987 on the Simplification of Formalities in Trade in Goods and to the Convention of 20 May 1987 on a common transit procedure (hereinafter—Customs Conventions), approximation of Ukrainian legislation with the Council Regulation (EC) No 1186/2009 of 16 November 2009 setting up a Community system of reliefs from customs duty and Regulation (EU) No 608/2013 of the European Parliament and of the Council of 12 June 2013 concerning customs enforcement of intellectual property rights.

As of March 2023, experts pointed out that there had already been progress in the implementation of the Decision of the Customs Legislation (Ališauskas, 2023). Particularly, the Customs Conventions had been ratified in October 2022 and Ukrainian customs legislation was amended accordingly as well. Consequently, the Commission's Analytical report on Ukraine's alignment with the EU *acquis* has recognised the high level of approximation of the Ukrainian legislation with the EU law in the area of customs legislation (European Commission, 2023c). On the other side, the main issue as of now is related to the practical implementation of legislative acts, namely the implementation of customs software, increasing application for the authorised economic operators' status by Ukrainian companies (Ališauskas, 2023).

Although certain provisions of the EU law will be harmonised on the “best endeavours basis”, such changes will have a substantial impact on the DCFTA implementation. Firstly, both EU and Ukraine exporters and importers will be able to benefit from the expedited customs formalities. Secondly, the ratification of the Customs Conventions demonstrates Ukraine's willingness to reach in the short run the level of the economic integration comparable with the members of the European Free Trade Association (EFTA).

With respect to the second group of changes it is argued that they were possible, but the war had expedited their completion. Following Ukraine's application for the EU membership on 28 February 2022, just four days after the full-scale invasion, the European Council granted the EU candidate status to Ukraine on 23 June 2022 (European Council, 2022). It is worth mentioning that the AA does not contain any obligations or

even declaratory provisions regarding granting the candidate status, which allows to suggest that under different circumstances granting the candidate status could have taken much longer. In its Opinion on Ukraine's application for membership of the European Union, the European Commission pointed out seven criteria that are to be complied in order to further proceed with the membership application, namely opening accession negotiations (European Commission, 2022a). Presently, the consortium of Ukrainian analytical centres states that Ukraine has "from good to excellent state of the execution" of these criteria (Sydorenko, 2023). Later on, in December 2023 the European Council decided to open accession negotiations with Ukraine (European Council, 2023).

The granting of the candidate status and opening accession negotiations does not liberalise trade or has any immediate effect on trade relations, however, it strategically allows both EU and Ukraine to differently view DCFTA implementation. Consequently, all changes to the Ukraine's legislation or other unilateral actions by the EU or Ukraine should be considered as steps on the way towards Ukraine's EU membership, i.e. leading to the trade liberalisation as well. The velocity of the decision-making in granting the candidate status to Ukraine demonstrates that the full-scale invasion of Russia has expedited political decisions, which otherwise could have taken much longer.

The third and a very important bilateral change that was made after the full-scale invasion is the conclusion of the Road Agreement. In recent years, a critical situation has developed with international cargo transportation due to the exhaustion of the quota of permits for Ukraine to pass through the territory of the Republic of Poland. This problem became especially acute in 2018–2021, when already in June–July Ukrainian exporters and importers faced a lack of permits and queues emerged at the border checkpoints with the EU (Zasiadko, 2022). This situation is caused by the fact that in recent years, Poland has been systematically reducing the quantitative quota of permits - from 260,000 in 2014 to 160,000 in 2021. After the entry into force of the AA, trade with Poland and other EU countries has been growing every year, which has led to an ever-increasing need for cargo transportation. Part 2 of Article 136 of the AA clearly stipulates: "the Parties shall not introduce conditions of mutual market access between the Parties that are more restrictive in comparison with the situation existing on the date preceding the date of entry into force of this Agreement" (EU-Ukraine, 2014). Lack or absence of permits and queues at the border have become a challenge for

exporters for the entire country. At the beginning of 2022, Ukraine and Poland reportedly reached a consensus following bilateral and trilateral consultations concerning the quantity of transport permits (Pogribnak, 2022). However, this solution was not implemented due to the start of the full-scale Russian aggression against Ukraine.

In order to solve the problem, which was magnified by the full-scale Russian military aggression, Ukraine and the EU have concluded the Road Agreement, which entered into force on 16 September 2022, for a 1-year period (EU-Ukraine, 2022b). Subsequently, the Joint Committee extended the Road Agreement for one more year, though not making it permanent (EU-Ukraine, 2023). Although the preamble of the Road Agreement provides a reference to the AA, it is still a separate legal instrument and does not become part of it. The Road Agreement is a temporary solution and the effect of it will be limited because of the legal uncertainty for Ukrainian producers, who are reluctant to increase their production due to the logistics conditions.

Thus, certain bilateral regulatory changes are taking place notwithstanding the full-scale invasion, for example, the approximation of Ukrainian customs legislation. On the other hand, other bilateral changes, like granting the candidate status to Ukraine, opening accession negotiations as well as concluding the Road Agreement have been expedited by the full-scale invasion, as such regulatory responses have not been under consideration before. It seems that the full-scale invasion has intensified the process of concluding the Road Agreement between the EU and Ukraine instead of bilateral agreements at the level of Ukraine and separate EU member states. However, its limited duration makes the Road Agreement rather a temporary solution, rather than a permanent and important step in trade liberalisation.

It is worth pointing out regulatory changes that should have happened but have not taken place arguably due to the full-scale invasion, particularly the conclusion of the Agreement on Conformity Assessment and Acceptance of Industrial Products (ACAA). According to the Annex III to the Chapter 3 of the Title IV of the AA, Ukraine undertook a number of unilateral obligations in the area of the technical regulations, namely to gradually approximate legislation in this area (almost all transition periods are up to 5 years) and withdrew conflicting national standards, including its application of interstate standards (GOST/TOCT) (EU-Ukraine, 2014). Ukraine is obliged to refrain from amending its horizontal and sectoral legislation listed in Annex III to this Agreement,

except for aligning such legislation progressively with the corresponding EU *acquis* and maintaining such alignment as well. In return, the EU has agreed to add ACAA as a Protocol to the AA, covering one or more sectors listed in Annex III to this Agreement once the Parties agreed that the relevant Ukrainian sectoral and horizontal legislation, institutions, and standards have been fully aligned with those of the EU. The necessity of concluding the ACAA was mentioned in the doctrine (Taran, 2020; Taran et al., 2022).

The operation of ACAA would allow Ukrainian exporters to decrease expenses for the conformity assessment and, consequently, offer a better price for the industrial goods. Thus, “the execution of ACAA has been considered as a ‘carrot’ for Ukraine in return of potentially lost/decreased share for Ukrainian products in external markets, where GOST is applied” (Petrov & Holovko-Havrysheva, 2021, p. 18). According to Ukraine’s Ministry of Foreign Affairs, low-voltage electrical equipment, electro-magnetic compatibility of equipment and machine safety were identified as priority sectors for the ACAA at first stage. However, negotiations on ACAA execution have started only in 2021⁴ and the execution of the ACAA is only planned for 2023. The only major step facilitating the execution of ACAA happened at the end of 2022. Particularly, the national standardisation body of Ukraine collaborated with experts from European Committee for Standardisation and European Committee for Electrotechnical Standardisation in order to update the database of European standards and examine the legal framework, which provided the possibility of batch adoption of European standards as Ukraine’s national standards by adopting the Order No. 285 of December 28, 2022 (Ministry of Economy of Ukraine, 2022).

The second important issue in the bilateral relation is that after the full-scale invasion all legal instruments with respect to national producer protection are unavailable for Ukraine, as some measures are not feasible from an economic standpoint. For example, for many goods it would be difficult to impose an anti-dumping duty, as it

⁴ On 12 March 2021 a meeting of the Working Group on technical barriers to trade within the framework of the EU-Ukraine High-Level Industrial Dialogue was held in a virtual format. The key purpose of the meeting was to discuss the conclusions of the interim report of the mission’s experts on the preliminary assessment of Ukrainian quality infrastructure and the adaptation of national legislation. <https://ukraine-cu.mfa.gov.ua/en/2633-relations/torgovselno-ekonomichne-spiro-bitnictvo-ukrayina-yes/dostup-ukrayinskih-tovariv-do-rinku-yes-ugoda-asaa>.

would create a supply shortage. Other measures, like safeguards or security exceptions would not meet the national interests of Ukraine due to cooperation with the EU in other sensitive areas. To give an example, a safeguard investigation against cheese (mainly against producers from the EU), which was launched in 2021, was completed in 2022 without the application of any measures due to the contradiction with Ukrainian national interests (Inter-Departmental Commission on International Trade, 2022). Although national interests are not explicitly defined in the official notification on the completion of the investigation for obvious reasons, arguably Ukraine did not take decisions that were economically unfavourable for the EU, potentially in return for the continuation of the support in other important areas. Finally, the AA has undergone invisible changes without any formal amendments, because many of its provisions allowing for national producer support (trade remedies, subsidies) have become “dead” as it became impossible to apply them under the war. Such unwritten change considerably influences the effect of the trade liberalisation which is discussed above and definitely deserves to be a subject matter of a separate economic study.

To conclude, the full-scale invasion had a mixed effect on trade liberalisation. On one hand, bilateral trade was further liberalised by adopting “scheduled” changes like customs legislation harmonisation or solving “hot” issues like concluding the Road Agreement as well as taking strategic steps such as the granting of the candidate status and opening accession negotiations. On the other hand, some long-awaited changes contributing to trade liberalisation, like the completion of ACAA negotiations did not take place because of the war. Finally, some legal instruments envisaged in the AA has become unavailable for Ukraine due to the martial law.

3 REGULATORY CHANGES AT THE EU LEVEL

According to the Council Conclusions on the Integrated Approach to External Conflicts and Crises, the EU adopts a multi-dimensional approach towards external crises, which includes “diplomatic, security, defence, financial, trade, development, cooperation and humanitarian aid fields” (Council of the European Union, 2018). It is worth mentioning that in the Ukrainian case the EU has deployed almost all types of the above-mentioned measures, although in this chapter we will discuss only trade measures.

The EU has made a few very important decisions in the area of international trade regulation following the full-scale invasion. Particularly it has granted unilateral trade concessions to Ukraine and launched the international trade aid project “Solidarity Lanes” (European Commission, 2022b, c). It is worthwhile noting that trade concessions were adopted as a unilateral measure and not as an amendment to the AA. Particularly, Regulation 2022/870 of the European Parliament and of the Council of 30 May 2022 provides for temporary trade-liberalisation measures supplementing trade concessions applicable to Ukrainian products under the AA (hereinafter—“Regulation”) (European Parliament at the Council, 2022). The Regulation entered into force on 4 June 2022 and hereinafter was substituted by the Regulation 2023/1077 of the European Parliament and of the Council of 31 May 2023 (hereinafter—“Extending Regulation”) effectively extending the trade concessions for one more year (European Parliament & the Council, 2023).

According to the above-mentioned regulations, the preferential arrangements granted to Ukrainian products include the elimination of import tariffs on specific products from Ukraine, the suspension of tariff-rate quotas, and the suspension of anti-dumping and safeguard duties on imports from Ukraine. These measures have proven to be a significant support for the Ukrainian economy during the war. However, this unilateral trade liberalisation is subject to several conditions, failure to comply with which can result in temporary suspension. Moreover, Article 4 of the Regulation provides for the safeguard clause and a very broad provision on preventive measures (European Parliament & the Council, 2022).

In fact, the EU has already used the safeguard mechanism specified in the Article 4(9) of the Regulation by adopting Commission Implementing Regulation (EU) 2023/903 of 2 May 2023 introducing preventive measures concerning certain products originating in Ukraine, which was effective just for one month, until 5 June 2023 (European Commission, 2023a). It provided that certain crops from Ukraine (wheat, maize, rapeseed, sunflower seeds) could not be stored but only transit through Bulgaria, Hungary, Poland, Romania, or Slovakia. This measure was applied in response to the unilateral measures adopted by the mentioned EU member states, prohibiting the import, and transit of Ukrainian agricultural products. Understandably, the Extended Regulation contains a similar safeguard clause, which once again was enforced by the European Commission (European Parliament & the Council, 2023). Particularly, Implementing Regulation 2023/1100 as of 5 June 2023

introducing preventive measures concerning certain products originating in Ukraine has extended the duration of the previous Implementing Regulation, though it narrowed down the scope of covered goods (European Commission, 2023b).

The economic rationale of the Implementing Regulation is unclear. The exports statistics for 11 months in 2022 show a moderate result. In particular, in January—November 2022 exports in goods from Ukraine constituted \$40.7 bln with the EU remaining the key trading partner, which amounted to 66.4% comparing to January—November 2021. In total, Ukraine's negative trade balance for 11 months was \$8.52 bln comparing to \$3.64 bln in January—November 2021 (State Statistics Service of Ukraine, 2023). According to the statistics of the European Commission, exports of grains from Ukraine did not increase significantly (Liborero, 2023). Such facts cast a doubt on the legal rationale and legal certainty of such decision as well. According to the preambles of the above-mentioned decisions, lack of storage capacities and high transit costs are bigger problems than quantities as such. Thus, a subsidy to compensate for transit costs or infrastructure development can actually be considered as a better remedy rather than an imports limitation.

Evaluating the Regulation, even judging from the preamble it is straightforward that such or similar measures of support of Ukraine would not have been taken without the full-scale Russian aggression and the necessity to support Ukraine. On the other hand, the need to adopt the Implementing Regulation demonstrates tensions between the EU institutions and member states. Such tensions result in a decision that is disputable from the standpoint of the provisions of the AA and World Trade Organisation (WTO) agreements.

Particularly, the prohibition of imports of certain goods is likely to be found incompatible with Article 29 of the AA, as import prohibition is in conflict with the gradual decrease of import duties. Potentially, the measure can be found incompatible with Article 35 of the AA, setting forth the prohibition “to adopt or maintain any prohibition or restriction or any measure having an equivalent effect on the import of any good of the other Party”. From a different standpoint, EU and Ukraine continue reaching an aim specified in Article 25 of the AA, namely “the Parties shall progressively establish a free trade area over a transitional period of a maximum of 10 years starting from the entry into force of this Agreement”. This means that each year trade barriers, i.e. tariffs and tariff rate quotas should be disappearing. Thus, the impact of unilateral

trade measures should be decreasing. This can be also accelerated by the start of Ukraine's accession negotiations.

The Implementing Regulation can potentially be considered as incompatible with Articles I and II of the General Agreement on Tariffs and Trade as contained in Annex 1A of the 1994 WTO Agreement (World Trade Organisation, 1994) as it discriminates against Ukraine and raises duties without proper substantiation. It is unlikely that the Implementing Regulation will be considered as falling under the scope of Article 5 of the Agreement on Agriculture or under security or general exceptions clauses (World Trade Organization, 1995).

To conclude, the EU has adopted unilateral measures as a means of economic support under the full-scale aggression. On the other hand, such decisions show tensions among EU institutions and its member states. On the positive side, such "experiments" can be of help for future accession negotiations. Hence, even during the war trade can be liberalised. However, the necessary condition of this is the vision of a joint future. At the same time, it is important to note that such measures have not been adopted as amendments to the AA, which would have provided for more legal certainty and predictability though less flexibility. It is worth pointing out that the AA is the core of EU-Ukraine bilateral trade relations and all measures are based on it. Thus, changing the status of unilateral actions within the AA can be a natural continuation.

4 UNILATERAL MEASURES ADOPTED BY EU MEMBER STATES

Starting from 24 February 2022, EU member states in general were following and implementing the policy of the European Union with respect to the temporary protection of Ukrainians fleeing from the war, military support, and applying the Regulation adopted by the EU (Lazarenko & Rabinovych, 2025). Interestingly, EU member states did not voice much discontent over the adopted Regulation and the Road Agreement, though such measures deprived them of a more flexible bilateral approach, at least in the case of transport permits.

Nevertheless, several measures have been adopted that significantly impacted the implementation of the DCFTA, such as unilateral import/transit prohibitions of Ukrainian agriculture products and de facto prolonged customs and border formalities combined with the lack of border checkpoints.

Particularly, Poland, Bulgaria, Hungary and Slovakia adopted import/transit prohibitions with respect to agricultural products originating in Ukraine in April 2023, which was coupled with threats from Moldova to adopt a similar measure (Hunt, 2023). Later on, Poland, Hungary, and the Slovak Republic have adopted import prohibitions on grains from Ukraine, which resulted in launching the official WTO dispute settlement procedure by Ukraine (World Trade Organization, 2023). These measures were applied with some dissimilarities. For example, Slovakia has established an import ban due to sanitary concerns, i.e. pesticides have been found in the wheat, whereas Poland did not rely on sanitary/phytosanitary concerns as a ground for adopting its measures. According to farmer unions in the above-mentioned countries, the reason for adopting such measures lies in the price depression that was caused by the abundance of Ukrainian goods in Poland, Bulgaria, Hungary, and Slovakia (Gijs, 2023). Consequently, such abundance arguably seems to be caused by the lack of efficient and cheap transit routes to potential final destinations of such goods. Starting from November 2023 until at least February 2024 farmers in Poland, Slovakia, Romania, and Hungary started blocking the border, thus, basically stopping exports from Ukraine. Protesting farmers were demanding the termination of the Road Agreement and withdrawal of quota-free tariff-free regime with Ukraine. These protests at some points were politicised and were not stopped or prevented by respective governments of EU member states, thus, leading to negotiations with protesters. One of the measures under discussion is the possibility to introduce export licencing regime by Ukraine for a number of goods exported from Ukraine to the EU.

Unilateral measures adopted by the EU member states have been criticised for potentially being in violation of WTO Agreements, the AA and EU *acquis communautaire*. Specifically, such measures are likely to be questioned under Articles V and XI of the GATT 1994 due to applying this measure specifically to Ukraine and prohibiting not only imports but banning the transit as well (World Trade Organisation, 1994). Measures at issue are likely to be considered as violating Articles 4 and 5 of the Agreement on Agriculture (World Trade Organisation, 1995). Such measures are unlikely to fall under Article XX or Article XXI of the GATT 1994 exceptions first and foremost because grounds for such exceptions have not been listed in the implementing legislation (World Trade Organisation, 1994). Taking into account that both Ukraine and the EU are parties to the Multi-Party Interim Appeal Arbitration Arrangement such

dispute may even result in the final decision, though it is unlikely that the WTO will be chosen as a forum for the dispute settlement.

Such measures are likely to be considered as non-compliant with Articles 34 and 35 of the AA and unlikely to be encompassed by exceptions. While it seems unlikely that these measures will be scrutinised by the dispute settlement panel, Ukraine in June 2023 has completed the list of arbiters who can hear such disputes, which may be considered as an indirect signal of potential dispute in the future. Furthermore, such unilateral measures can arguably be considered as being in breach of Article 28 (second para) and 29 of the Treaty on the Functioning of the European Union (European Union, 2012).

Arguably, potential in compliance with EU law and the AA has caused the adoption of the Implementing Regulation, even though the latter seems to be a fragmental rather than fundamental solution. This solution can be considered as a concession to EU member states, as it does not resolve the main problem on how to avoid the adoption of unilateral measures in the future. This example shows how unilateral measures have been transformed into EU measures.

Another *de facto* approach that is applied by authorities of EU member states neighbouring with Ukraine are prolonged customs and border formalities combined with the lack of border checkpoints. Historically, checkpoints at the western border of Ukraine have not been prepared for the increase of exports. Consequently, at some checkpoints there is no personnel responsible for sanitary and phytosanitary checks, at some checkpoints such personnel operate only during very limited time. Thus, this adds to the queues at the border and increases the time for exports. In May 2022, the Minister of Agrarian Policy and Food of Ukraine and the Minister of Agriculture and Development of Rural Territories of Poland signed a Joint Declaration in which they agreed to increase the quantity of sanitary and phytosanitary inspectors up to 19 and to consider the possibility of a 24/7 operation of such inspectors in the busiest checkpoints (without a specification) (Solskyy, 2022). However, this has not solved the problem. The transit time of trucks at the Ukrainian-Polish border was reported to be more than a week throughout the spring–autumn 2022 period.

The above-mentioned problem is further magnified by the insufficient quantity of border checkpoints (Bukovskyy, 2022). This issue is regulated at the bilateral level, not at the EU level, thus, it depends on the national and local authorities of the EU member states whether or not new border

checkpoints will be opened. For example, the exchange of notes for opening the new border checkpoint “Nyzhankovychi-Malhowice” (Lviv region, Ukraine) has been conducted in 2007, however, the border checkpoint still is not fully operating. It is worth mentioning that this is not a new issue, however, the full-scale aggression has increased its influence on the EU-Ukraine bilateral trade.

Concluding, even though EU institutions are responsible for the common commercial policy, the adoption of the unilateral measures witnesses the need for cooperation at the bilateral level between Ukraine and neighbouring EU member states. It also demonstrates the need for the Commission to closely coordinate with member states and consult with relevant stakeholders in member states (e.g. farmers) to ensure that EU unilateral support measures do not harm domestic constituents and, if they do, there is a compensation program. Secondly, it also underlines the necessity for EU institutions to pay more attention to and potentially facilitate and support some unilateral measures, like increasing the capacity of operating border checkpoints, as well as improving transit infrastructure or opening new border checkpoints in order to fully implement the AA.

5 UKRAINE’S REGULATORY RESPONSE

First and foremost, all Ukrainian institutions responsible for the European integration, namely, the Government of Ukraine, Verkhovna Rada of Ukraine, and the Government Office for Coordination on European and Euro-Atlantic Integration, have continued to operate and even have managed to complete complex projects, i.e. the preparation and submission of EU membership application, and filling in the questionnaire for obtaining the EU candidate status. Additionally, the Cabinet of Ministers of Ukraine has adopted the Regulation “On the Procedure of the Primary Assessment of the State of Implementation of EU *Acquis*” on 28 February 2023, and such primary assessment was completed by the end of 2023 (Cabinet of Ministers of Ukraine, 2023). Such steps demonstrate the resilience of Ukraine’s institutions responsible for the European integration and their flexibility in adopting relevant legal solutions.

Secondly, Ukrainian state-owned enterprises have also demonstrated good progress in the European integration. For example, the Ukrainian energy provider Ukrenergo joined the unified continental European electricity system (ENTSO-E) and completed an emergency synchronisation of its power grids with the ENTSO-E in March 2022. This step has

further allowed Ukraine to export electricity to the EU, thus, showing mutually beneficial partnership. Ukraine has continued to implement the EU-Ukraine AA despite the full-scale aggression.

Ukraine has only partially and temporarily modified the trading regime with its trading partners by limiting imports of goods to critical imports and limiting payments for services and intellectual property for foreign partners due to the potential capital flight (Cabinet of Ministers of Ukraine, 2022), although such measures are encompassed by security exceptions or balance-of-payments exceptions. Such measures have not been criticised by Ukrainian trading partners and eventually have become less stringent.

6 FROM THE DCFTA TO FULL EU MEMBERSHIP: NEXT STEPS

As demonstrated, the EU has taken a number of measures to support Ukraine during the war. Ukraine's future accession to the EU will shape all other bilateral issues. Consequently, all EU concessions or other unilateral actions shall be considered as steps on Ukraine's way towards EU membership.

Taking into account the complex interplay of measures undertaken at the bilateral level, by the EU and unilaterally by the member states, it is suggested that a comprehensive update of the AA can be one of the most efficient means to ensure further bilateral and permanent EU-Ukraine trade liberalisation on the path of Ukraine to the EU membership. While diplomatically and economically it can be a complex step, it would guarantee permanent trade liberalisation and a continuous movement of Ukraine towards EU membership. Particularly with respect to market access, the Regulation, which provides for quota-free and tariff-free access to the EU market, should eventually be modified into an Amendment to the AA. It would allow Ukraine to gradually join the EU single market, while Ukrainian companies would be able to make long-term export plans. This would also allow EU member states to voice their concerns and EU institutions to reconcile all concerns, thus, creating a long-term solution. Such a strategic approach would further allow for the prompt removal of non-tariff barriers, including the execution of ACAA and speeding up equivalence decisions for various types of Ukrainian goods.

At the same time there are other measures which could be undertaken by Ukraine, the EU, or both in order to support Ukraine's economy at

war, while not modifying Ukraine's EU accession processes, its access to the EU market, implementing measures regarding a joint transit corridor and the joint implementation of Ukraine's green recovery. With respect to market access, measures aiming at improving access of Ukrainian companies to the EU government procurement might be considered as well as the support of private initiatives concerning the promotion of the consumption of Ukrainian goods and services.

A further area of cooperation might be a joint transport corridor. The Russian aggression against Ukraine has created a very specific transportation situation, where the EU will become the main transport and transit partner of Ukraine. This will also allow EU companies to enhance their infrastructure and to jointly benefit with Ukraine from such a transit corridor. Upon reaching such understanding, necessary legal solutions are obvious and will follow, such as prolongation of the Road Agreement, normalising border controls at border checkpoints while increasing the transit capacity of border checkpoints by reconstructing operating border checkpoints and building new border checkpoints. Specifically, it is recommended to extend the Road Agreement for at least 5 years in order to improve conditions for exports and conclude the same agreement with Moldova for the same term to create one transport area. It is advisable to execute the bilateral agreements between Ukraine and the EU/EU member states on the normalisation of border controls. Temporarily, such agreement can be executed between Ukraine and neighbouring EU member states (Poland, Hungary, Romania). The draft Agreement should define the procedures and rules for the operation of joint checkpoints, exchange of information between control services, combating illegal migration, conducting joint patrols, as well as the possibility for the control services of Ukraine and the Republic of Poland to delegate (transfer) the performance of their official powers and functions. Potentially such agreement can specify the following as well: a) availability of inspectors at all cargo checkpoints on a 24/7 basis; b) a comprehensive list of risk factors regarding sanitary/phytosanitary inspection; and c) the duration of the certificates' issuance. The implementation of these legal instruments will probably require certain funds to be accumulated. Apart from legal instruments, it is worth mentioning certain organisational measures which can be taken, such as the specification of certain border checkpoints for specific goods or improving road and railway infrastructure.

Finally, the reconstruction efforts can be undertaken by Ukraine and its partners in conformity with the EU Green Deal (Golubovska-Onisimova et al., 2023; Chubyk, 2023; Stubbe & Saha, 2022). This will require the continuation of the AA implementation, as well as the harmonisation with EU laws and standards that are not part of the Association Agreement (on this topic, see also Shyrokykh & Melen-Zabramna, 2025). Such an approach would allow constructing new buildings in compliance with EU “green” approach and expediting Green Deal implementation in Ukraine. At the same time, a thorough analysis of the impact on Ukrainian producers and consumers needs to be conducted.

7 CONCLUSIONS

The primary and most important lesson is that the war did not slow down EU-Ukraine trade liberalisation, but moreover caused its deepening (Freudlsperger & Schimmelfennig, 2025). However, such liberalisation is temporary, conditional, and unilateral.

First and foremost, the clear political sign on providing the EU candidate status to Ukraine and opening accession negotiations has demonstrated the readiness of the EU to deal with the unprecedented challenges. The speed of the adopted political decision demonstrates the ability to react appropriately under complicated circumstances. Secondly, both bilateral and unilateral measures ideally need to be synchronised and coordinated, otherwise it can lead to the situation when the bilateral decision is not fully implemented due to the unilateral measures of the EU member states. Finally, it is worth mentioning that certain bilateral border issues, like the lack of border checkpoints, have been further magnified by the war and need to be implemented by relevant EU member states but with coordination from EU institutions. More coordination and synchronisation between EU institutions and EU member states is needed in order to solve these complex problems.

The full-scale war has impacted the implementation of the DCFTA both by deepening trade liberalisation and at the same time elucidating potential problematic areas in bilateral relations. The granting of the EU candidate country status, the conclusion of the Road Agreement, unilateral concessions, and trade aid efforts coupled with the continuous implementation of the DCFTA in Ukraine have contributed to trade liberalisation. On the other hand, unilateral actions by EU member states, issues with border checks, the temporary character of concessions and the

impossibility of Ukrainian government to use certain provisions of the AA add to the legal uncertainty in trade relations.

It is suggested that only a comprehensive update of the AA can be one of the most efficient means to ensure further bilateral and permanent EU-Ukraine trade liberalisation on the path of Ukraine to the EU membership. Market access, joint transport corridor, and green reconstruction are the areas in which EU-Ukraine trade relations can develop in parallel with the accession negotiations. From this standpoint, the DCFTA can be considered as a living organism, which is evolving according to the needs and wishes of the parties and being naturally terminated upon the Ukraine's accession.

REFERENCES

- Ališauskas, V. (2023). *Пух до митного союзу з ЄС: де Україна досягла успіху і що потрібно доробити. [Moving towards a customs union with the EU: where Ukraine has succeeded and what needs to be done]*. European Pravda. <https://www.eurointegration.com.ua/experts/2023/03/21/7158185/>
- Bukovsky, A. (2022). *Перевезення врожаю зернових та зернобобових у 2021/2022 маркетинговому році [The transportation of grains in 2021/2022 marketing year]*. BRDO. <https://brdo.com.ua/analytics/perevezennya-vro-zhayu-zernovyh-ta-zernobobovyh-u-2021-2022-marketyngovomu-rotsi-zalyphen-gruden-2021-roku/>
- Cabinet of Ministers of Ukraine. (2022). Regulation “On Some Issues Pertaining to Ensuring Imports” No 153. <https://zakon.rada.gov.ua/laws/show/153-2022-%D0%BF#Text>
- Cabinet of Ministers of Ukraine. (2023). Regulation “On the Procedure of the Primary Assessment of the State of Implementation of EU Acquis” No 189. <https://www.kmu.gov.ua/npas/pro-zatverdzhennia-poriadku-provedennia-pervynnoi-a189>
- Chubyk, A. (2023). *Financial mechanisms for the green reconstruction of Ukraine to be more attractive for European banks and investors*. GLOBSEC. <https://www.globsec.org/what-we-do/publications/financial-mechanisms-green-reconstruction-ukraine-be-more-attractive>
- Council of the European Union. (2018). *Council Conclusions on the Integrated Approach to external conflicts and crises*. <https://data.consilium.europa.eu/doc/document/ST-5413-2018-INIT/en/pdf>
- Dabrowski, M., Domínguez-Jiménez, M., & Zachmann, G. (2020). *Six years after Ukraine's Euromaidan: Reforms and challenges ahead. Policy brief*. Bruegel. <https://www.bruegel.org/2020/06/six-years-after-ukraines-euromaidan-reforms-and-challenges-ahead/>

- Elagraa, M., Jamal R., & Elkhafif, M. (2014). *Trade facilitation in the occupied Palestinian territory*. UNCTAD. https://unctad.org/system/files/official-document/gdsapp2014d1_en.pdf
- European Commission. (2022a). *Communication from the Commission to the European Parliament, the European Council and the Council. Commission Opinion on Ukraine's application for membership of the European Union*. COM(2022)407final.
- European Commission. (2022b). *EU-Ukraine Solidarity Lanes*. Brussels. https://eu-solidarity-ukraine.ec.europa.eu/eu-assistance-ukraine/eu-ukraine-solidarity-lanes_en
- European Commission. (2022c). *Joint declaration—1 billion euro mobilised for Solidarity Lanes to increase global food security and provide a life-line for Ukraine's economy*. https://ec.europa.eu/commission/presscorner/detail/en/statement_22_6825
- European Commission. (2023a). Commission Implementing Regulation (EU) 2023/93 of 2 May 2023 introducing preventive measures concerning certain products originating in Ukraine. C/2023/3063. Official Journal of the European Union L 144I, 5.6.2023, pp.1–4 [no longer in force].
- European Commission. (2023b). *Commission Implementing Regulation (EU) 2023/1100 of 5 June 2023 introducing preventive measures concerning certain products originating in Ukraine*. C /2023/3767. Official Journal of the European Union L 144I, 5.6.2023, pp. 1–4 [no longer in force].
- European Commission. (2023c). *Commission analytical report on Ukraine's alignment with the EU acquis*. SWD(2023) 30 final. Brussels. https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-02/SWD_2023_30_Ukraine.pdf
- European Council. (2022). *Conclusions on Ukraine, the membership application of Ukraine, the Republic of Moldova and Georgia, Western Balkans and external relations*. <https://www.consilium.europa.eu/en/press/press-releases/2022/06/23/european-council-conclusions-on-ukraine-the-membership-applications-of-ukraine-the-republic-of-moldova-and-georgia-western-balkans-and-external-relations-23-june-2022/>
- European Council. (2023). *Conclusions on Ukraine, enlargement and reforms*. European Council and Council of the European Union. <https://www.consilium.europa.eu/en/press/press-releases/2023/12/14/european-council-conclusions-on-ukraine-enlargement-and-reforms/>
- European Parliament and the Council. (2023). Regulation (EU) 2023/1077. On temporary trade-liberalisation measures supplementing trade concessions applicable to Ukrainian products under the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part. *Official Journal of the European Union*, L, 144, 1–6.

- European Parliament and the Council. (2022). Regulation (EU) 2022/870. On temporary trade-liberalisation measures supplementing trade concessions applicable to Ukrainian products under the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part as of May 30, 2022. *Official Journal of the European Union*, L 152/103, 103–108 [no longer in force].
- EUROSTAT. (2023). *Ukraine's share in EU exports peaked in March*. <https://ec.europa.eu/eurostat/web/products-eurostat-news/-/ddn-20230526-2>
- EU-Ukraine. (2014). Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part. *Official Journal of the European Union*, L 161/3, 29.5.2014, 3-2137.
- EU-Ukraine. (2022a). Decision No 1/2022 of the EU-Ukraine Association Committee in Trade Configuration of 25 October 2022 as regards the update of Annex XV (Approximation of customs legislation) to the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part. *Official Journal of the European Union*, L 301/214, 22.11.2022, 214–216.
- EU-Ukraine. (2022b). Agreement between the European Union and Ukraine on the carriage of freight by road. *Official Journal of the European Union*, L 179, 6.7.2022, 4–10.
- EU-Ukraine. (2023). Decision No 2/2023 of the Joint Committee established by the Agreement between the European Union and Ukraine on the carriage of freight by road of 16 March 2023 as regards the continuation of the Agreement [2023/929]. *Official Journal of the European Union*, L123/26.
- Gijs, C. (2023). Poland, Hungary, Slovakia impose own Ukraine grain bans as EU measure expires. *POLITICO*. <https://www.politico.eu/article/poland-hungary-slovakia-extend-grain-bans-despite-blocs-lift/>
- Golubovska-Onisimova, G., Havryliuk, R., Andrushevych, N., Kravchenko, O., Aleksieva, Y., & Malkova, T. (n.d.). *Environmental reforms for post-war recovery and European integration of Ukraine. Analysis paper -- 2023*. Society and Environment. <https://www.rac.org.ua/en/priorities/war--green-reconstruction-of-ukraine/environmental-reforms-for-post-war-recovery-and-european-integration-of-ukraine-2023>
- Fredlsparger, C., & Schimmelfennig, F. (2025). War and boundary formation: The Russo-Ukrainian War and European integration. In M. Rabinovych & A. Pintsch (Eds.), *Ukraine's thorny path to the EU: From "integration without membership" to "integration through war."* Palgrave Macmillan.
- Hunt, N. (2023). *Explainer: Why have some EU countries banned Ukraine grain imports?* Reuters. <https://www.reuters.com/markets/commodities/why-have-some-eu-countries-banned-ukraine-grain-imports-2023-04-17/>

- Inter-Departmental Commission. (2022). Notice on the termination of a special investigation as to the import to Ukraine of some types of cheeses independently on the country of origin without using special measures. *Government Courier*. <https://ukurier.gov.ua/uk/articles/povidomlennya-pro-privipinennya-specialnogo-03-09-22/>
- Kryvetska, O. (2022). *Russia's aggression against Ukraine: Global trade implications after 7 months of war*. IISD. <https://www.iisd.org/articles/policy-analysis/russia-ukraine-trade-implications>
- Lazarenko, V., & Rabinovych, M. (2025). Collective protection for Ukrainians in the EU: Laws, practices and implications for EU and Ukrainian policies. In M. Rabinovych & A. Pintsch (Eds.), *Ukraine's thorny path to the EU: From "integration without membership" to "integration through war."* Palgrave Macmillan.
- Liboreiro, J. (2023). Eastern European countries push for bans on Ukrainian grain to be extended until end of the year. *Euronews*. <https://www.euronews.com/my-europe/2023/07/25/eastern-european-countries-push-for-bans-on-ukrainian-grain-to-be-extended-until-end-of-ye>
- Martin, P., Mayer, T., & Thoenig, M. (2012). The geography of conflicts and regional trade agreements. *American Economic Journal: Macroeconomics*, 4(4), 1–35.
- Ministry of Economy of Ukraine. (2022). *An important step on the path to the EU: Ukraine adopts full base of European standards*. Government Portal. <https://www.kmu.gov.ua/en/news/vazhlyvyi-krok-na-shliakhu-do-ies-ukraina-pryiniiala-povnu-bazu-ievropeiskyykh-standartiv>
- Naumenko, D., Bulana, O., & Diachenko, S. (2023). *Україна та Угода про асоціацію: моніторинг виконання 2014 — 2022. [Ukraine and Association Agreement: The monitoring of the implementation 2014–2022]*. <https://www.kas.de/documents/270026/22934445/UA+2023+UCEP+Ukraine+and+the+Association+Agreement.+Implementation+Monitoring+2014-2022.pdf/6c8e5702-ab17-c8cf-a2da-cl1dacb6b66b?version=1.0&t=1685631554159>
- Petrov, R., & Holovko-Havrysheva, O. (2021). Resilience in the context of the implementation of the EU-Ukraine Association Agreement. *SSRN*. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4059428
- Petrov, R., Van der Loo, G., & Van Elsuwege, P. (2015). The EU-Ukraine Association Agreement: A new legal instrument of integration without membership? *Kyiv-Mohyla Law and Politics Journal*, 1, 1–19. <https://doi.org/10.18523/kmlpj52678.2015-1.1-19>
- Pintsch, A., & Rabinovych, M. (2023). Geopolitical and technocratic: EU international actorness and Russia's war against Ukraine. *European Issues*, 657. (Foundation Robert Schuman). <https://www.robert-schuman.eu/en/doc/questions-d-europe/qe-657-en.pdf>

- Pogribnak, Y. (2022). *Шлях через Польщу: як Мінінфраструктури вирішує проблему з доступом перевізників до країн ЄС*. [The way through Poland: How the Ministry of Infrastructure solves the problem of the carriers' access to the EU countries]. 24 Channel. https://24tv.ua/shlyah-cherez-polshhu-yak-mininfrastrukturi-virishuye-problemu_n1875505
- Polachek, S. W. (1980). Conflict and trade. *The Journal of Conflict Resolution*, 24(1), 55–78.
- Rabinovych, M. (2022). EU-Ukraine “deep” trade agenda: The effectiveness and impact perspectives. *International Politics*. <https://doi.org/10.1057/s41311-022-00384-x>
- Ruta, M. (Ed.). (2022). *The impact of the war in Ukraine on global trade and investment*. Washington, DC. <http://hdl.handle.net/10986/37359>
- Shyrokykh, K., & Melen-Zabramna, O. (2025). Europeanization of Ukraine’s policy on environment and climate: Instrumental and anticipatory compliance. In M. Rabinovych & A. Pintsch (Eds.), *Ukraine’s thorny path to the EU: From “integration without membership” to “integration through war.”* Palgrave Macmillan.
- Solsky, M. (2022). *За останні 2 місяці ми суттєво наростили темпи експорту зернових*. [For the last 2 months we have increased exports of grains]. AgroPortal.ua. <https://agroportal.ua/publishing/intervyu/mikola-solskiy-nam-potribno-eksportuvati-20-mln-t-zerna-do-lipnya>
- State Statistics Service of Ukraine. (2023). *Державна служба статистики України. Зовнішня торгівля України товарами у січні–листопаді 2022 року*. [International trade of goods of Ukraine for January – November 2022]. ukrstat.gov.ua. <https://ukrstat.gov.ua/express/expr2023/01/02.pdf>
- Stubbe R. & Saha, D. (2022). *How to implement a green reconstruction for Ukraine*. German Economic Team. <https://www.german-economic-team.com/en/newsletter/how-to-implement-a-green-reconstruction-for-ukraine/>
- Sydorenko, S. (2023). *Seven EU requirements for Ukraine: Accession negotiations getting closer*. European Pravda. <https://www.eurointegration.com.ua/eng/articles/2023/05/4/7161006/>
- Taran, S. (2020). *What is the way for achieving greater trade liberalization with the EU: Ukraine’s fulfilment of EU tariff quotas*. Kyiv School of Economics. <https://kse.ua/kse-research/yak-dosyagti-bilshoyi-liberalizatsiyi-torgivli-z-yes-stan-vikoristannya-tarifnih-kvot-yes-ukrayinoyu/>
- Taran, S., Shepotylo, O., Yavorsky, P., & Bondarenko, Y. (2022). *Аналіз торгівлі товарами між Україною та ЄС в рамках ПВЗВТ: поточний стан та перспективи для лібералізації*. [EU-Ukraine trade in commodities under the DCFTA: Current state and potential for liberalization]. Kyiv School of Economics. <https://kse.ua/ua/kse-research/analiz-torgivli-tovarami-mizh-ukrayinoyu-ta-yes-v-ramkah-pvzvt-potochniy-stan-ta-perspektivi-dlya-liberalizatsiyi/>

- Van Elswege, P. (2025). Revisiting the EU-Ukraine Association Agreement: A crucial instrument on the road to membership. In M. Rabinovych & A. Pintsch (Eds.), *Ukraine's thorny path to the EU: From "integration without membership" to "integration through war."* Palgrave Macmillan.
- World Trade Organization. (1994). General Agreement on Tariffs and Trade (GATT). WTO. https://www.wto.org/english/res_e/publications_e/ai17_e/gatt1994_e.htm
- World Trade Organization. (1995). Agreement on Agriculture. WTO. https://www.wto.org/english/docs_e/legal_e/14-ag_01_e.htm
- World Trade Organization. (2023). *Ukraine initiates WTO dispute complaints against Hungary, Poland and the Slovak Republic*. WTO. https://www.wto.org/english/news_e/news23_e/ds619_620_621rfc_2Isep23_e.htm
- Zasiadko, M. (2022). *Poland and Ukraine agree on extra permits for cross-border road freight*. IntermodalNews EU. <https://intermodalnews.eu/2022/02/17/poland-and-ukraine-agree-on-extra-permits-for-cross-border-road-freight/>

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Harmonisation with the EU *Acquis* amid the Resistance to Russian Aggression as a Catalyst of Ukrainian Copyright Recovery

Liliia Oprysk

1 INTRODUCTION

Ukraine applied for EU membership amid the first days of Russia's full-scale military invasion in February 2022. In June 2022, the European Council granted Ukraine EU candidate member status, and in December 2023, the European Council decided to open accession negotiations with Ukraine. By no means does it signify the beginning of Ukraine's road towards EU membership; instead, it is a continuation of Ukraine's European course as set out in the Ukrainian Constitution (Constitution of Ukraine, 1996, Articles 85, 102, 166). However, the opening of negotiations in June 2024 and Ukraine's determination to complete the process as soon as possible accelerate the speed of legislative approximation.

At a time of fighting a full-scale war, Ukraine continues to reform its legislation to, *inter alia*, bring it closer to the EU *acquis*. As is explored at length by Shyrokykh, Busol, and Koval in this volume (Shyrokykh et al., 2024), Russia's war against Ukraine became a catalyst for reforms.

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European integration remains the only viable path, and Ukraine's EU membership aspiration serves as a motivator for reforms. Compliance calculations of political elites also changed, making non-compliance's cost higher than its benefits. Since the start of the full-scale invasion in February 2022, Ukrainian legislation has been adopted and amended at a remarkable speed.

One of the recent developments is the adoption of the new Copyright Act in December 2022, replacing the Copyright Act of 1993. The new Copyright Act goes a long way to fulfil the obligations under the 2014 Ukraine-EU Association Agreement to ensure a high level of protection for rights holders. The latter is the starting point of EU copyright harmonisation, as 'right holders' comprise the creators (authors) and any natural or legal persons to whom rights to exploit intellectual property (IP) commercially have been assigned. Proper protection of IP owned by businesses is one of the cornerstones of an attractive investment environment, which will be crucial for Ukraine's recovery.

This chapter does not aim to give a detailed account of legislative novelties. Instead, the focus is on placing this development into the broader context by shedding light on the entangled legacy of Ukrainian history in the area of copyright. It is argued that the recent reforms ought to be viewed in terms of recovery from the legacy of the second half of the twentieth century and that the harmonisation with the EU *acquis* plays an instrumental role. Considering harmonisation with the *acquis* amid the resistance to Russian aggression as a catalyst of copyright recovery, this chapter emphasises the value of exploring the legacy of Ukrainian history beyond the mere Soviet past and the alignment of underlying values as a cornerstone of the recovery process.

The chapter is structured as follows. Section 1 briefly accounts for the EU copyright *acquis* as a moving target for approximation. Section 2 provides a historical background to Ukrainian copyright law, introducing the different regimes in place during the formative years of the international copyright system and the particular instrumentalisation of copyright by the Soviet regime in the years preceding Ukraine's independence. Section 3 focuses on European integration as a driver of copyright modernisation in Ukraine. Section 4 discusses the catalytical role of harmonisation with the EU *acquis* in the copyright recovery process.

2 EU COPYRIGHT *ACQUIS* AS A MOVING TARGET FOR APPROXIMATION

Copyright, as one of the branches of Intellectual Property (IP), confers time-limited exclusionary rights that subsist automatically in authorial works (Pila & Torremans, 2019, p. 221) in literary, artistic, scientific, or other domains, such as literature, music, paintings, etc. There are multiple rationales behind copyright protection, and the significance of each of them depends on the particular legal tradition and jurisdiction (Goldstein & Hugenholtz, 2019, pp. 14–21). Among the most important functions of copyright in modern democratic societies is safeguarding the freedom of expression, which is also one of the fundamental rights under the European Convention on Human Rights (ECHR) and the EU Charter of Fundamental Rights (CFR). At the same time, copyright can also restrict the freedom of expression of others. Hence, copyright aims to balance the protection of individual authors and society's interests in access to knowledge and culture and not to monopolise the expression (Couto, 2008).

Copyright is extensively harmonised under the EU copyright *acquis*—secondary EU law and respective Court of Justice of the European Union (CJEU) case law. From the perspective of the harmonisation of laws of Ukraine with the EU *acquis*, it is interesting for several reasons. First, in the EU, copyright is closely connected to fundamental (human) rights and the notion of private property. Human rights and individual's autonomy were not particularly recognised or protected during the Soviet period of Ukraine's history, immediately preceding Ukraine's independence. Ukraine and other countries previously occupied by the Soviet Union, such as Estonia, Latvia, and Lithuania, had to swiftly develop the respect and protection of human rights to, inter alia, join the Council of Europe (CoE).

Second, although human rights and private property were not protected for parts of Ukrainian history, copyright legislation was, in fact, in place in the nineteenth and twentieth centuries in all the different states ruling on the territory of Ukraine. In the Soviet Union, however, copyright could hardly be said to result in genuine protection of authors. It rather became instrumentalised to further the state policies. Third, and following up on the previous point, the legacy of Ukrainian history appears to have resulted in significant obstacles to the effective and swift

alignment of Ukrainian copyright with the EU *acquis*, the latter being known for its high level of protection of right holders.

Whereas international copyright rules have seen rather few changes in the past 30 years, harmonisation with the EU copyright *acquis* remains a moving target. Copyright is not harmonised entirely internationally or within the EU (not least due to the principle of subsidiarity), and priorities are changing. The EU internal market and removing barriers to the free movement of goods and services have been the primary rationales for copyright harmonisation in the EU (Ramahlo, 2016). During the first wave of harmonisation in the 1990s, which coincided with the rapid development of the Internet and online dissemination of protected works, the focus was on safeguarding exclusive rights of rights holders (either authors or parties acquiring rights from the authors). With the adoption of the latest instruments in 2019, the Digital Single Market Directive 2019/790, the focus has somewhat shifted to protecting authors, particularly when dealing with intermediaries and licencing their rights. New exceptions to exclusive rights necessary to safeguard the use of works and society's perspective were introduced.

Although there are a few EU Directives in the field of copyright, copyright law-making de facto extensively happens through the CJEU jurisprudence (Rosati, 2023). It is particularly evident in the extensive case law on the right of communication to the public, which covers any making of works available on the Internet (Oprysk, 2022). Hence, approximating laws, or even more importantly, enforcing national law implementing the secondary EU law, requires thorough knowledge of the CJEU jurisprudence to interpret it in line with the EU *acquis*.

At the same time, copyright provides room for accommodating society's interests, which are by no means static or homogenous. Harmonisation with the EU copyright *acquis* leaves room for advancing changeable national priorities, inter alia, by taking advantage of the flexibilities in international and EU copyright regimes. This aspect is particularly relevant to the copyright recovery process through harmonisation with the *acquis*. Conversely, adequate protection of IP is important to an attractive investment environment, which will be crucial for Ukraine's recovery. Hence, a discourse on the different interests underlying the legacy of Ukrainian copyright shall inform the discussion on how approximation can account for their changes.

3 UKRAINIAN COPYRIGHT AND LEGACY OF UKRAINIAN HISTORY

Authors' rights gained wide recognition in Europe in the nineteenth century. However, as copyright protection is territorial, the conclusion of bilateral and later international treaties to protect domestic authors abroad followed, with the Berne Convention of 1886 (last revised in Stockholm in 1967) paving the way. In the period of international harmonisation of copyright, the territory of modern Ukraine was controlled by multiple states, and the borders kept changing throughout the nineteenth and twentieth centuries, leading to the particular path of development of Ukrainian copyright law since Ukraine regained independence in 1991.

A brief historical account of Ukraine's situation during the formative age of modern copyright ought to shed light on rather different experiences of the population depending on the geographical region. Next, particularities of Soviet copyright, which independent Ukraine "inherited" during the early independence years, and its instrumentalisation are explored.

3.1 A Plethora of Copyright Regimes, or Not Only the Soviet

Ukrainian (copyright) law, as well as history, is rather often perceived exclusively through the prism of its Soviet past. In fact, Ukrainian authors were subject to a wide variety of copyright laws throughout the nineteenth and twentieth centuries and, to a varying extent, participated in the policy- and law-making in the respective states. It is assumed that the Soviet Union's legacy left a most significant mark on the legal system due to the regime's oppressive Sovietisation and Russification policies. The entire territory of modern-day Ukraine was governed by the Ukrainian Soviet Socialist Republic as a part of the Soviet Union for roughly 50 years preceding Ukraine's independence. Before that, the Russian Empire controlled parts of Ukrainian territory for a variable amount of time between 125 and 250 years. Nevertheless, these are by far not continuous periods, as parts of territories were at times occupied by other states, such as Germany and Poland, during and after the First and Second World Wars.

It shall not be forgotten that during the nineteenth and twentieth centuries, Ukraine was governed by various states, including, unfortunately short-lived, Ukrainian Republics. In particular, authors in western

Ukraine enjoyed copyright protection in the Austro-Hungarian Empire, the Second Polish Republic, Czechoslovakia, Hungary, and Romania. In south-eastern Ukraine, authors enjoyed some copyright protection in the Russian Empire and, subsequently, the Soviet Union. Whereas the latter never joined the Berne Convention (the main international copyright harmonisation instrument), the states governing western Ukraine did become part of the Berne Union in the 1920s. Berne Convention's 1908 Berlin Act, for instance, laid down the minimum standards of protection and abolished any formalities. The latter ought to ensure that authors enjoy protection independently from the state and its approval, which was not at all welcomed in the Soviet Union, as we shall see in the next part.

The Austro-Hungarian time of western Ukraine's history stands out. Eastern Galicia (now western Ukraine) became part of the Habsburg Empire after the Polish–Lithuanian Commonwealth was partitioned in 1772. With the forming of the Austria-Hungary Union in 1867, the territory became part of the Kingdom of Galicia and Lodomeria, a crownland within the Austrian part of the Austria-Hungary dual monarchy. Ethnic minorities (e.g., Polish, Ruthenian¹ (old Ukrainian), German, Czech, and Slovenian) all held a special status within the monarchy, which entailed not only participation in political life and use of language in education and press but also translation of laws into these minority languages.² During the same historical period, publications in Ukrainian were heavily censored or completely banned in the territory occupied by the Russian Empire (Remy, 2007).

Amid the dissolution of Austria-Hungary and the February Revolution in the Russian Empire in 1917 during the First World War (the Eastern Front of which lay in Ukraine), Ukrainians consolidated to form their states, West Ukrainian People's Republic in the west and Ukrainian People's Republic on the rest of Ukraine's territory. The two republics proclaimed the Unification Act on 22 January 1919, and both were recognised by several states and represented at the Paris Peace Conference

¹ See Internet Encyclopedia of Ukraine, Ruthenians, <https://www.encyclopediaofukraine.com/display.asp?linkpath=pages%5CR%5CU%5CRuthenians.htm> The language evolved through nineteenth and twentieth centuries, at the time Eastern Galicia became part of the Second Polish Republic, Ruthenian closely resembled modern-day Ukrainian.

² The Austrian Law Gazette was translated into minority languages such as Polish, Ruthenian (old Ukrainian), Romanian, Czech, Croatian, Slovenian, and Italian.

under the auspices of the League of Nations in 1919–1920. However, they did not receive formal recognition under the Treaty of Versailles in 1919; instead, the territories became part of the Second Polish Republic and the short-lived Russian Republic (1922 onwards, Soviet Union). For roughly 20 more years (until the beginning of the Second World War in 1939), part of the population would enjoy copyright protection in the Second Polish Republic. In the aftermath of the Second World War and the 1951 Polish-Soviet territorial exchange, the territory of Ukraine became occupied solely by the Soviet Union.

The account above is by no means exhaustive. However, it gives an impression of the variety of copyright laws in force in the different parts of modern Ukraine throughout the nineteenth and twentieth centuries. The copyright regime in place, combined with the varying degrees of freedom of the press in the Ukrainian language, had a significant impact on Ukrainian literature and the accessibility of foreign literature in Ukrainian.³ Potentially, all of the regimes in place throughout this historical period left their mark on the development of thought about regulating copyright after Ukraine regained independence. It remains, however, outside the scope of this chapter.

From the perspective of copyright law-making in a narrower sense (in terms of legislative provisions), it is arguably the Soviet Union copyright law that left the most visible mark. Following the declaration of independence on 24 August 1991, the Law on Succession of Ukraine announced Ukraine as a legal successor of rights and obligations under international treaties of the Union of Soviet Socialist Republics (USSR) and left laws of the Ukrainian Soviet Socialist Republic (SSR) in force as long as they did not contradict the laws of Ukraine (Law on Succession of Ukraine N 1543-XII, 1991). In the next section, we turn to the particularities of Soviet copyright and the state of copyright protection for roughly 50 years preceding Ukraine's regaining independence in 1991 and adoption of its

³ Літературно-науковий вісник—Literary and scientific bulletin, for instance, was started and published in Galicia (Western Ukraine) from 1898, during the Austro-Hungarian rule. The bulletin was published in Ruthenian and contained, apart from literature in Ruthenian also, translations of foreign authors in Ruthenian. Austria, whose laws applied at that time, signed the Berne Convention only in 1920. Hence, Austria was under no obligation to recognise the right of translation for foreign authors.

own copyright law in 1993. It forms an essential background to understanding the subsequent modernisation of IP and copyright protection in Ukraine.

3.2 *Instrumentalisation of Copyright in the Soviet Union*

"Our literature is no private enterprise designed to please the fluctuating tastes of the literary market. We are certainly under no obligation to find a place in our literature for tastes and ways that have nothing in common with the moral qualities and attributes of Soviet people" (Zhdanov, 1950)

Zhdanov was the Head of the Propaganda and Agitation Department at the Central Committee of the Communist Party of the Soviet Union, and he knew well the importance of literature and printed press in society. Copyright history is closely connected to the printing press, printing privileges, and spreading ideas and information. It is, therefore, unsurprising that literature and copyright became the instruments in the hands of the Soviet regime.

Perhaps surprisingly, on the other hand, in the Soviet Union, authors were formally protected. Communist philosophy denying private property and propagating collective ownership could be mistaken for either denying individual rights altogether or placing society's interest in access to works at the very top of copyright rationales. It appears to be neither nor. The copyright law of the Soviet Union was neither there to protect authors nor to serve freedom of expression and access to information. On the contrary, the copyright policy served as another instrument of censorship, as well as the assimilation of peoples of the union, erasing their identity and language.

Part IV of the Fundamentals of Civil Legislation of the USSR and the Union Republics, titled "Copyright", laid down authors' rights (USSR, 1968, Chapter IV). However, these rights were not regarded as property but existed solely for "society's benefit" (Goldman, 1990, p. 403). The latter is, of course, one of the rationales for copyright protection around the globe and in Europe in particular. However, the understanding of society's benefits and the role of copyright were rather different.

At first sight, authors enjoyed the protection of a fair scope, consisting of the right to publish, reproduce, and circulate their works, as well as the right of integrity and the right to receive remuneration for the use

of a work (USSR, 1968, Article 98). At the same time, the exercise of these rights and extensive exceptions undermined the usefulness of protection from the authors' perspective. The right of publication, for instance, was overshadowed by the law forbidding private publications, meaning that only the state could sanction publications (Burrus, 1962, p. 715). The state fixed the level of royalties depending on the category of a work measured in its positive contribution to the building of Communism: outstanding, good or satisfactory, or altogether without a positive contribution (Burrus, 1962, p. 723).

The state could compulsorily purchase copyright to publication, public performance, and other use of a work (USSR, 1968, Article 106). With the payment of remuneration, a work could be publicly performed where no fee was charged (limited to cases approved by the state), recorded for purposes of the film, used by composers, or on manufactured articles (USSR, 1968, Article 104).

The law contained provisions seemingly to protect authors licencing their rights. Any contract term that placed them in a position less advantageous than that accorded by law or standard contract was invalid (USSR, 1968, Article 101). It might be mistaken for a high level of protection for authors, but it, in reality, was rather a façade. First, the state provided standard contracts. Second, the spirit of collectivism was protected by no means an independent judiciary (Burrus, 1962, p. 713). Effectively, the only possible contracting party was the state, enacting standard contracts and allowing the circulation of particular works to spread the "Soviet" culture (Goldman, 1990, p. 411).

Despite copyright protection arising automatically, the system did not encourage or support independent creation in the spirit of freedom of expression. The government's monopoly over publishing activities achieved control over the expression. The Soviet government could delimit the scope of "rights" conferred while claiming to cognise the *droit d'auteur* (Burrus, 1962, pp. 713–714). Authors' rights were, in essence, the right to remuneration, and as long as an author received some remuneration for work performed, he could not be heard to complain about society enjoying its rights in the matter (Burrus, 1962, p. 717).

The *façade* function of the copyright provisions is well illustrated by copyright scholarship in Europe and the US in the 1990s. In a publication dated 1990, for instance, a scholar considered the Berne Convention and the USSR copyright code to be much alike in their spirit, arguing that an author under the Soviet codes lose *only* (emphasis added) the

right to decide whether and under what conditions their works will be used (Goldman, 1990, p. 410). Furthermore, much emphasis was placed on bringing the language of Soviet law into conformity with the Berne Convention (Goldman, 1990, p. 411). The Soviet Union never joined the Berne Convention. Foreign works were being translated without the author's permission, even though the legislation stated that the authors would be informed (Cramer, 1965, p. 536). There was no interest in recognising the author's right of the integrity of a work because of propaganda in which translation could be employed (Cramer, 1965, p. 539).

Copyright law thus served a very particular function in the Soviet Union. Producing works satisfying the "outstanding contribution to the building of Communism" criterion could lead to state remuneration for the use of a work. Workers engaging in creative work were provided with pension plans, incapacity and inactivity compensations, and the support of their unions (Goldman, 1990, p. 409). At first sight, great care was taken of creators, but it has to be put into the context of the absence of a free market, state control over publishing, and censorship.

Unfortunately, Soviet copyright law has often been examined exclusively through the prism of the development of Russian copyright. In respect of societal interests, references were often made exclusively to Russians, whereas "Soviets" appeared to refer to the state apparatus (for example, in Cramer, 1965). Occasionally, minority languages were mentioned, referring to other languages spoken within the Soviet Union. Given that the Soviet state instrumentalised the copyright to censor and assimilate peoples and eradicate the use of other languages, its copyright policy would certainly merit a closer look, including from a decolonisation perspective (on colonisation in the context of Russia and the Soviet Union, see Mälksoo, 2023).

3.3 European Integration as a Driver of Copyright Recovery

After regaining independence in 1991, Ukraine has taken the course of European integration. Since 2019, the European and Euro-Atlantic course has been irreversible under the Ukrainian Constitution. The accession of Ukraine to major international treaties in the field of copyright and trade took place in parallel with accession to the ECHR and ever-increasing cooperation with the European Union. In the following parts,

the path of Ukrainian copyright post-1991 is considered with a focus on European integration.

3.4 *(In)dependent Path of Ukrainian Copyright Post-1991*

Measures to reform IP protection were taken shortly after Ukraine regained independence. In 1992, by a decree, the President of Ukraine defined the urgent measures for the social protection of literature and art makers in the transition to market relations (Decree of the President of Ukraine N 75, 1992). The decree removed both income tax and contribution tax payment for associations of creators (writers, music makers, artists, etc.) and enterprises and organisations created by them. The decree also guaranteed publishing houses (created in Soviet times) support for their printing activity (availability of paper) and higher royalties to authors. A state agency on copyright and related rights was to be established based on the Ukrainian Soviet Republic's branch of the Soviet Union Copyright Agency. These measures could be seen as aiming, first and foremost, at safeguarding the *status quo*, i.e., supporting publishers and “established” authors in presumably not yet fully democratised participation in creative activity, at a time of high pressure of hyperinflation in the already poor state of the economy following the Soviet exploitation.

The first Copyright Act, the Law on Copyright and Related Rights (Copyright Act of 1993), was adopted fairly swiftly on 23 December 1993. It was by all means a modern act conferring broad protection of authors in respect of their works, guaranteeing protection not being subject to any formalities, and including novel objects of protection such as software programmes, recently addressed at the international level. The Act saw multiple amendments but remained in force until December 2022, when a new Copyright Act (Copyright Act) was passed. A few years later, in 1996, the Ukrainian Constitution was adopted, guaranteeing freedom of literary, artistic, and scientific creativity, recognising an individual's right to the results of his or her intellectual, creative activity under Article 54.

Modernisation of legislation and moving away from the Soviet legacy have been priorities for policymaking (Bondarenko, 2008). Although by no means perfect, the Copyright Act of 1993 laid down the basics of copyright protection in compliance with international treaties. Still, despite the numerous amendments and approximation with the EU *acquis*, as will be addressed in more detail in the following parts, it

failed to ensure the appropriate level of protection. As copyright protection arises automatically and enforcement also depends on private parties acting to enforce their rights and end an infringement, the public plays a crucial role. Inherited lack of respect for private property and individual rights has considerably influenced the efficacy of legislative reforms. The emergence of Internet connectivity and online dissemination of works only worsened the situation. Widespread online copyright infringement remains among the main issues for Ukraine's trade partners (Office of the United States Trade Representative, 2022, p. 59).

The lack of respect for private property has been partially mitigated following privatisation and creation of the institute of private property. At the same time, IP concerns immaterial property, which might not be as intuitive for society at large. Raising awareness of IP and its role in society has been crucial to copyright recovery. It is also one of the strategic goals of the draft IP strategy of Ukraine (Orliuk, 2023). Schools and higher education institutions are particularly important institutions in this regard. The school curriculum in jurisprudence, at least since 2017, contains a separate topic on IP.⁴

Education, of course, goes both ways. The prosecutors and the courts need to be aware of the ways to end IP infringements and capable of taking timely measures to enforce IP appropriately. Enforcement is seen as a weak point of the Ukrainian legal system also outside the copyright domain.⁵ The draft IP strategy also acknowledges this aspect, calling, inter alia, for effective mechanisms of exercising right holders' rights to stop infringement taking place on the Internet (Orliuk, 2023).

Symptomatically, in early 2023, the European Court of Human Rights (ECtHR) handed a judgment in the case of *Korotyuk v. Ukraine*. The Court found there to be a violation of Article 1 of Protocol 1 to the ECHR on the right to property where Ukrainian authorities failed to take steps to identify infringers of the applicant's copyright through unauthorised dissemination of her work on the Internet against a payment.

⁴ Curricula are available (in Ukrainian) at <https://mon.gov.ua/ua/osvita/zagalna-serednya-osvita/navchalni-programi/navchalni-programi-dlya-10-11-klasiv>.

⁵ Enforcement of laws and court judgments, as well as enforcement capacity is a recurring theme in the Analytical Report following the Communication from the Commission to the European Parliament, the European Council and the Council Commission Opinion on Ukraine's application for membership of the European Union, Commission Staff Working Document, SWD(2023) 30 final, 1.2.2023.

3.5 *International Copyright Treaties and Fundamental Rights*

A major milestone in Ukrainian copyright law-making was both the adoption of the Copyright Act of 1993 and the accession to international copyright and fundamental rights treaties. Following the adoption of the Copyright Act of 1993, Ukraine became a member of the Berne Union by acceding to the Berne Convention in 1995. In 1995, Ukraine also acceded to the ECHR, and in 1996, the Ukrainian Constitution was adopted.

For European copyright, its status within the human rights framework is important. ECHR Protocol 1 lays down protection of property as entitlement to the peaceful enjoyment of possessions. Although IP is not explicitly mentioned as a type of property, it has long been recognised as such under the ECtHR jurisprudence (Geiger & Izyumenko, 2018). Furthermore, the EU CFR explicitly mentions IP under Article 17 on the right to property. It is therefore also important for Ukrainian copyright that Ukraine also ratified Protocol 1 to the ECHR in 1997.

These events took place during a major development in international copyright law-making, as the World Intellectual Property Organisation (WIPO) Copyright Treaty and the TRIPS Agreement were negotiated in 1994–1996. Ukraine followed the development and acceded to the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty in 2001, effectively before they entered into force. For comparison, the EU signed both Treaties in 1996, but ratification took place only in 2009. Ukraine's accession to the Rome Convention protecting performers, producers of phonograms, and broadcasting organisations took place in 2002, shortly after Estonia, Latvia, and Lithuania (soon-to-be EU member states at that time) acceded to the Convention. Finally, the TRIPS Agreement accession took place in 2008, as Ukraine became a World Trade Organisation (WTO) Member.

The middle of the 1990s also signified the conclusion of a couple of agreements between the EU and Ukraine: the Interim Agreement on Trade and Trade-related Matters between the EC and Ukraine of 1995 and the Partnership and Cooperation Agreement between the European Communities and their Member States, and Ukraine of 1998. Both agreements contained provisions on IP, providing for improving IP protection in Ukraine to the level of protection similar to the one provided in the Community. Unfortunately, the efforts were not as successful as hoped,

partially due to the lack of EU policies regarding approximation with partnership states (Kapitsa, 2023, pp. 283–289). The current instrument of harmonisation is the Ukraine-EU Association Agreement of 2014.

3.6 *Approximation with and Beyond the Ukraine-EU Association Agreement*

Ukraine-EU Association Agreement (AA) signed in 2014 became a major milestone in the process of European integration of Ukraine. The AA is the most voluminous and ambitious of all the EU's association agreements and is characterised as an “integration-oriented” one, meaning that it includes principles, concepts, and provisions to be interpreted and applied as if the third country is part of the EU (Petrov, 2023, p. 17). The agreement aims to deepen the relations between Ukraine and the EU, and to establish a Deep and Comprehensive Free Trade Area (DCFTA), leading to Ukraine's gradual integration into the EU internal market (Van Elsuwege et al., 2014). The objective, according to Article 1(2)(d) is to support Ukraine's transition into a functioning market economy and establish conditions for enhanced economic and trade relations.

Chapter 9 under Title IV of the agreement deals with IP, and Sect. 2 sub-Sect. 1 of the chapter with standards for copyright and related rights. The provisions include obligations on parties to comply with certain international copyright law instruments (which Ukraine has been party to since before the agreement), and some substantive provisions from the EU secondary copyright law. The latter part presents a “patchwork” of articles from various Directives in force when signing the agreement in 2014.⁶ Such selective inclusion of provisions is prone to result in the lack of conformity with the EU copyright *acquis* applicable in the EU member states (Kapitsa, 2023, pp. 292–295).

⁶ Among others, Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, OJ L 167, 22.6.2001, Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs (Codified version), OJ L 111, 5.5.2009, Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases, OJ L 77, 27.3.1996, Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights (codified version), OJ L 372, 27.12.2006.

Given that the agreement is dated 2014, it (partially) reflects the state of the EU copyright *acquis* at that point, so the latest additions, such as the Digital Single Market (DSM) Directive 2019/790, are not considered. This, however, does not mean that these developments remain unaccounted for in Ukrainian copyright law-making. Certain provisions stemming from the DSM Directive have been implemented in the new Copyright Act. Not only does the law mirror some provisions of the more recent EU Directives, but also, occasionally, the Court of Justice of the European Union (CJEU) case law.⁷ The latter could indeed ease the application of the law for the Ukrainian courts, as the availability of translation of the CJEU judgments could become a major issue in interpreting the provisions harmonised under the EU *acquis*. At the same time, including the CJEU judgments directly into the Copyright Act can soon lead to shortcomings due to possible inconsistencies with the future CJEU case law. The establishment of the new specialised IP court in Ukraine, which is in progress, could, however, help to ensure uniform interpretation (Shtefan & Gurgula, 2023).

The Copyright Act goes well beyond the obligations under the AA. In particular, a provision nearly analogue to the controversial Article 17 of the DSM Directive on the direct liability of online content-sharing service providers for infringement of copyright by the users of their service is included in Article 58. The provision is still not implemented in all the member states⁸ as it presents considerable difficulties in balancing the exclusive rights under copyright with the freedom of expression, on which it was (albeit unsuccessfully) challenged by Poland before the CJEU in case C-401/19 Republic of Poland v European Parliament and Council of the European Union. The question of whether implementation under Ukrainian law is balanced and safeguards the fundamental rights of users as envisaged under Articles 17(7) and 17(9) of the DSM Directive is an

⁷ An example is Article 12(7) of the Copyright Act on exclusive economic rights, which summarises the CJEU case law in linking cases, notably C-466/12 *Nils Svensson and Others v Retriever Sverige AB*, ECLI:EU:C:2014:76 (CJEU, 13 February 2014), C-160/15 *GS Media BV v Sanoma Media Netherlands BV and Others* ECLI:EU:C:2016:644 (CJEU, 8 September 2016), C-392/19 *VG Bild-Kunst v Stiftung Preußischer Kulturbesitz* ECLI:EU:C:2021:181 (CJEU, 9 March 2021).

⁸ See on the European Commission referring six MS to the CJEU following their failure to notify complete transposition measures https://ec.europa.eu/commission/presscorner/detail/en/ip_23_704.

open one. It could be argued that a second-mover advantage, i.e., implementing the provision once the member states have done it and reported on the first experiences, would be especially useful here, given that the Digital Services Act (Regulation (EU) 2022/2065) has been adopted in the meantime, further complicating the copyright & primary liability for infringements interface.

The recent changes also concern the enforcement of IP rights, which has, not without grounds, been considered one of the most problematic areas of Ukrainian copyright. The AA contains certain provisions on enforcing IP rights in Sect. 3 of Chapter 9 of Title IV. The section starts with reaffirming parties' commitments under the TRIPS Agreement and proceeds with partially adapted provisions of the EU Enforcement Directive 2004/48/EC. Although the Enforcement Directive is never mentioned in the AA itself, it is, in fact, relied on by the Ukrainian government in the AA implementation. In 2017, the adoption of measures implementing the Directive was included in the list of planned actions with an implementation deadline by the end of 2023.⁹

The Copyright Act goes beyond the implementation of the AA itself. In particular, Article 55 of the Copyright Act defines the circle of persons entitled to apply for the application of measures to protect rights under copyright and related rights, as well as *sui generis* rights. Article 231 AA requires providing entitlement only to the holders of IP rights, other persons authorised to use rights, and professional defence bodies, with the option of including collective management organisations (CMO). The Enforcement Directive, on the other hand, in Article 4 explicitly requires acknowledging the CMO's entitlement to seek the application of measures. The Copyright Act recognises all four categories, which aligns with the Directive. Hence, even though the AA is not meant to harmonise Ukrainian law with the EU copyright *acquis* fully, the implementation process goes beyond what is envisaged not only in terms of looking at the Directives underlying particular AA provisions but also staying in the loop of the latest developments and instruments adopted post the AA signature.

⁹ Resolution on the action plan for the implementation of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their member states, on the other hand № 1106 (2017, October 10). [in Ukrainian]. Some provisions of the Directive were implemented when the new Copyright Act was passed in December 2022 and they went clearly beyond the AA itself.

The 2022 Annual Report of the Ukrainian government on the Implementation of the AA considers the AA fulfilment to be on the level of 94%.¹⁰ The report prepared by the European Commission and delivered on 8 November 2023 characterised the alignment of Ukraine with the IP *acquis* (going beyond the AA and covering all the IP fields) as being on some level of preparation, highlighting the considerable legislative alignment since 2022 but also a shortcoming of enforcement and collective management.¹¹ The Ukrainian government's initial assessment of the state of implementation of the EU *acquis* of 14 December 2023 considers the degree of alignment of the Ukrainian legislation in the area of IP at the level of 98%.¹²

4 HARMONISATION AMID THE RESISTANCE TO RUSSIAN AGGRESSION AS A CATALYST OF RECOVERY

Ukraine does not let itself be restricted by the provisions of the AA when harmonising its legislation with the EU *acquis*. The EU candidate country status and the ongoing full-scale Russian invasion put the government under pressure to progress as swiftly as possible with reforms necessary to support the accession negotiations. The adoption of the new Copyright Act in late 2022 is in line with this trend. It fulfils some obligations under the AA but also approximates directly with the EU secondary law, hereby moving towards fulfilling the membership conditions.

At the same time, harmonisation is due not only in the sense of adopting the necessary legislative provisions, the text of which aligns with that of the EU copyright *acquis*. Enforcement remains a weak point; nurturing respect for IP in society at large appears instrumental. Protection of fundamental rights, such as the right to private property and

¹⁰ Annual Report on Implementation of the Association Agreement between Ukraine and the European Union, Government of Ukraine 2023, pp. 50–51. https://eu-ua.kmu.gov.ua/sites/default/files/inline/files/report_2022_.pdf.

¹¹ Ukraine 2023 Report, accompanying Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2023 Communication on EU Enlargement policy, Commission Staff Working Document, SWD(2023) 699 final, 8.11.2023, pp. 95–96.

¹² Report on the initial assessment of the progress in the implementation of the European Union legal acts (EU *acquis*) (2023) <https://eu-ua.kmu.gov.ua/wp-content/uploads/Zvit-UA.pdf>, pp. 37–40.

freedom of expression, was undermined and disregarded in the years of forced collectivisation and assimilation in the Soviet time. This brief but violent period in Ukraine's history does not define Ukraine's path. Nevertheless, it has complicated the development of copyright in Ukraine.

As the brief historical discourse illustrates, the Ukrainian population has been exposed to various copyright regimes throughout the formative period of modern copyright law in the nineteenth and twentieth centuries, from the Austro-Hungarian Empire to the Second Polish Republic. Unfortunately for the development of copyright after 1991, the legacy of years immediately preceding the independence is that of the Soviet Union, where copyright was an instrument of censorship and oppression rather than a safeguard of the freedom of expression and fundamental rights. Recognising the legacy of Soviet rule beyond the mere wording of legal provisions is crucial to the successful recovery and alignment with the EU standards.

Efforts to modernise and strengthen copyright protection in Ukraine have suffered from frail enforcement, both from the state and society. However, the changes in Ukrainian (civil) society following the Revolution of Dignity and, even more, the beginning of the full-scale Russian invasion in 2022 suggest a major turn. Disrespect for the rule of law and fundamental rights became significantly less tolerated. Fighting off the Russian occupation, forced deportations, and extermination, accompanied by endless Russian Army looting, leaves the Ukrainian society no choice but to refrain from taking freedom for granted and actively protect itself and its values.

The circumstances of harmonisation after gaining the EU candidacy status are dire but are likely to be defining for the recovery process, including that of copyright. The fight against injustice is multi-sided and not limited to an external dimension. On the contrary, justice, anti-corruption, and gender equality reforms have been progressing with remarkable speed since 2022 (Shyrokykh et al., 2024). Copyright shares a common ground with these areas, being dwelled in human rights and individual autonomy. The recovery is further supported by factors beyond legislative reforms. Numerous Ukrainian X(ex-Twitter) users, for instance, actively point out the failure to name the authors of the content

others post online.¹³ On the other hand, millions of Ukrainian refugees residing temporarily in European states are exposed to far more robust enforcement of copyright.¹⁴

Adopting the new Copyright Act does signify a major step towards compliance with the EU *acquis*. The experience of harmonisation shows that the approximation of laws is not a panacea against deficiencies in copyright protection. Anchoring copyright approximation in the alignment of underlying values, such as respect for fundamental rights and private property, ought to become a cornerstone of the copyright recovery process, together with the dissemination of knowledge about copyright's role in society. These notions have gained momentum amid the dire time of fighting a war. Efforts towards European integration amid Ukraine's resistance to Russian aggression become a catalyst of copyright recovery from the legacy of the unfortunate past.

REFERENCES

- Bondarenko, S. V. (2008). *Copyright and related rights: Course of lectures*. Institute of Intellectual Property and Law, Kyiv [in Ukrainian].
- Burrus, B. B. (1962). The Soviet law of inventions and copyright. *Fordham Law Review*, 30(4), 693–726.
- Couto, A. (2008). Copyright and freedom of expression: A philosophical map. In A. Gosseries, A. Marciano, & A. Strowel (Eds.), *Intellectual property and theories of justice* (pp. 321–351). Palgrave Macmillan.
- Cramer, A. P. (1965). International copyright and the Soviet Union. *Duke Law Journal*, 1965(3), 531–545.
- Geiger, C., & Izyumenko, E. (2018). Intellectual property before the European Court of Human Rights. In C. Geiger, A. N. Craig, & X. Seuba (Eds.), *Intellectual property and the judiciary* (pp. 9–90). Edward Elgar Publishing.

¹³ See, for instance, an X(Twitter thread) for Ukrainians pointing out the Ministry of Defence's failure to name the author of a photo <https://twitter.com/DefenceU/status/1556631568269152257>, which led to the Ministry making a comment acknowledging the author. Here, an author asks to be named the author of a photo which became viral <https://twitter.com/Liberov/status/1599336173058818049>.

¹⁴ With some of them learning the hard way the boundaries of permissible. Here, the reports on Ukrainian refugees receiving letters of copyright infringement for downloading pirated content in Germany <https://www.rbc.ua/rus/travel/tisyachi-evro-ukrayintsyam-nimechchini-prihodyat-1677663857.html>.

- Goldman, W. S. (1990). Berne-ing the Soviet copyright codes: Will the U.S.S.R. alter its copyright laws to comply with the Berne Convention? *Dickinson Journal of International Law*, 8(3), 395–515.
- Goldstein, P., & Hugenholtz, P. B. (2019). *International Copyright. Principles, law, and practice* (4th ed.). Oxford University Press.
- Kapitsa, Y. (2023). Association agreements and problems approximating intellectual property legislation of third countries with the EU acquis: The case of Ukraine. In H. Richter (Ed.), *Competition and intellectual property law in Ukraine* (pp. 281–319). Springer.
- Mälksoo, M. (2023). The postcolonial moment in Russia’s war against Ukraine. *Journal of Genocide Research*, 25(3–4), 471–481. <https://doi.org/10.1080/14623528.2022.2074947>
- Office of the United States Trade Representative. (2022). 2021 Special 301 Report (Intellectual Property Rights).
- Oprysk, L. (2022). How much “new” public is too much? The CJEU’s VG Bild-Kunst judgment and non-exhaustive control over a work’s consumption. *IIC - International Review of Intellectual Property and Competition Law*, 53(9), 1323–1342.
- Orliuk, O. (2023). Strategic directions of the intellectual property area development in Ukraine. In H. Richter (Ed.), *Competition and intellectual property law in Ukraine* (pp. 321–351). Springer.
- Petrov, R. (2023). The EU–Ukraine Association Agreement as a general framework of contemporary EU–Ukraine relations. In H. Richter (Ed.), *Competition and intellectual property law in Ukraine* (pp. 15–35). Springer.
- Pila, J., & Torremans, P. (2019). *European intellectual property law* (2nd ed.). Oxford University Press.
- Ramahlo, A. (2016). *The competence of the European Union in copyright lawmaking: A normative perspective of EU powers for copyright harmonization*. Springer International.
- Remy, J. (2007). The value circular and censorship of Ukrainian publications in the Russian empire (1863–1876): Intention and practice. *Canadian Slavonic Papers / Revue Canadienne Des Slavistes*, 49(1/2), 87–110.
- Rosati, E. (2023). *Copyright and the Court of Justice of the European Union* (2nd ed.). Oxford University Press.
- Shtefan, A., & Gurgula, O. (2023). The new intellectual property court in Ukraine: Its creation and exclusive jurisdiction. In H. Richter (Ed.), *Competition and intellectual property law in Ukraine* (pp. 353–372). Springer.
- Shyrokykh, K., Busol, K., & Koval, K. (2024). European Integration, and Democracy and Human Rights Reforms in Ukraine in the Wartime. In: Ukraine’s Thorny path to the EU. Palgrave Macmillan.
- USSR (1968). *Fundamentals of Soviet civil legislation and civil procedure of the U.S.S.R. and the Union Republics*. Moscow: Press Publishers.

- Van Elsuwege, P., Van Der Loo, G., & Petrov, R. (2014). The EU-Ukraine Association Agreement: Assessment of an innovative legal instrument. *Working Paper. European University Institute*.
- Zhdanov, A. (1950). *On literature, music and philosophy*. Lawrence and Wishart.

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Ukraine's Compliance with Norms of Environmental Democracy: Between Wartime Restrictions, EU Standards and Green Reconstruction

Yelyzaveta Aleksyeyeva and Anne Pintsch

1 INTRODUCTION

The Constitution of Ukraine, adopted in 1996, proclaims everyone's right to a safe environment and to free access to environmental information. Since then, pursuing its democratic development, Ukraine has overcome a severe gap in ensuring procedural environmental rights for its public (Environment-People-Law, 2021; Verkhovna Rada of Ukraine, 1996). The country, which started its democratic transformations only in the 1990s, in 2022 had instruments of participatory democracy that some of the European states are yet to implement. One of the most significant is the Single State Register of Environmental Impact Assessment introduced

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in 2017—an electronic tool for carrying out environmental impact assessment (hereinafter—EIA) procedures in a transparent and user-friendly way. To transpose the European Union’s (EU) Environmental Impact Assessment Directive 2011/92/EU (European Parliament & Council, 2011), Ukraine established a nationwide online EIA database providing free and full access to all documents originating throughout the EIA procedure, enabling the public to follow any EIA case in the country in real time and creating favourable conditions for soliciting comments and suggestions from various stakeholders including the general public.

EIA is a tool that has been used throughout the EU and in many countries worldwide from the 1980s onwards to assess the impacts of major industrial and infrastructure projects on the environment. EIAs make sure that both developers and authorities permitting the activities consider the likely effects on the environment at the earliest possible stage and take steps to avoid, reduce or offset negative effects. Public participation is an indispensable element of the EIA procedure. It obliges the authorities to disclose the information relevant to the EIA procedure and to conduct a dialogue with the public on the planned activities and its environmental effects, to take due account of the public input and once the decision is taken—to inform the public accordingly.

Given the shortage of relevant expertise in the public sector as well as poor environmental compliance by the industry in Ukraine, granting the public with wide possibilities to participate in EIA procedures significantly contributed to better incorporating environmental concerns into the decision-making. Once the procedure was introduced, environmental non-governmental organizations (NGO) began to routinely monitor the EIA register and comment on the planned activities often bringing new relevant information to the decision-making authorities and furthering the environmental conditions to be set out in binding EIA decisions (Ukrainian Nature Conservation Group, n.d.).

However, with Russia’s military aggression launched in February 2022, the Government of Ukraine enacted several rash and blunt measures restricting the public’s ability to have a say in major industrial and infrastructure projects during both the current hostilities and in the post-war reconstruction period. This chapter shows that these measures were not in accordance with the Constitution of Ukraine, domestic laws, and the respective EU *acquis* and not proportionate in light of their legitimate objectives. Thus, the Government of Ukraine initially failed to strike a fair

balance between defence and security interests and the competing interests of transparency, democratic decision-making and green development. However, urged by the domestic civil society and following the recommendation of the Aarhus Convention Compliance Committee, Ukraine withdrew these unproportionate measures in light of its EU candidate status and environmental considerations for reconstruction.

2 WARTIME RESTRICTIONS OF ENVIRONMENTAL DEMOCRACY AND THEIR IMPLICATIONS

The chapter contributes to uniting two strands of literature that to date have largely remained separate and embeds them into the literature on EU enlargement. The first strand is related to the restriction of democratic rights during wartime or for the sake of security. The second strand refers to the notion of environmental democracy. While scholars have discussed the role of international environmental law during wartime (e.g., Lara, 2015), to our knowledge, this is the first study on restrictions on environmental democracy as a consequence of war. At the same time, Ukraine is a candidate for EU membership, which makes this case an interesting study on EU accession conditionality and compliance (Shyrokykh & Melen-Zabramna, 2025).

War and security-related restrictions of democratic rights have long been discussed in the literature. The contributions have focused on wars of the eighteenth and nineteenth century (Blanchard, 1992), the First (e.g., Chafee, 1919) and Second World War (e.g., Brewin, 1940/41, O'Brien, 2007), as well as later wars (e.g., Smyth, 2013). Apart from war, scholars have analysed the impact of measures against terrorism (e.g., Gearty, 2007; McEldowney, 2005) and a general preoccupation with security (May, 2011) on democracy. However, all these contributions refer to general principles of democracy, such as the freedom of expression. This chapter takes a more specific perspective and looks at environmental democracy. The latter is not precisely defined and there have been several debates about its distinction from other concepts such as ecological democracy (Fischer, 2018, p. 258). One widespread understanding of environmental democracy relates to the three pillars of access to information, public participation and access to justice (e.g., World Resources Institute, 2015). These procedural rights are also enshrined in international documents such as the 1992 Rio Declaration (Principle 10), the Convention on Access to Information, Public

Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) and the Bali Guidelines adopted by the United Nations Environment Programme (UNEP) Governing Council in 2010 (UNECE, 1998; UNEP, 2010; United Nations Conference on Environment & Development, 1992).

Already in the early 1970s, public participation became a part of Environmental Impact Assessment in the United States, from where it spread to Europe and beyond (Fischer, 2018, p. 260). Today, it is considered “an integral part of the assessment procedure” (Glucker et al., 2013, p. 104). This is important in at least two ways. First, public participation can improve environmental outcomes. As Edelenbos et al. (2010) conclude on environmental projects in the Netherlands, “stakeholder involvement as one form of democratic anchorage has a very strong positive significant effect on the perceived process and content” (p. 59). Any disproportionate restriction of democratic rights related to the environment in Ukraine would therefore risk worse policy outcomes with regard to the country’s green reconstruction. Second, environmental democracy is an important element of the democratisation of countries.

Compliance with norms of environmental democracy is closely linked to Ukraine’s EU accession. The EU has promoted standards of environmental democracy in Ukraine in recent decades (Freyburg et al., 2015, pp. 184–198). Having become an EU candidate country in 2022, Ukraine must implement the EU’s respective *acquis*. In its 2023 report, the European Commission critically assessed that “[t]he implementation and enforcement of EIA [...] legislation deteriorated due to martial law. [...] EIAs must be carried out in line with the Espoo Convention and the adopted EU *acquis* [...]. Access by civil society to environmental information and participation in decision-making needs to be ensured” (European Commission, 2023, p. 126). Thus, any unjustified restrictions would therefore be stumbling blocks on Ukraine’s way to EU membership.

3 PRE-WAR NOTIFICATION AND ACCESS TO INFORMATION IN THE EIA PROCEDURE

Ukraine ratified the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) and the Aarhus Convention in 1999. Technically, they became integral elements of the national legal framework directly applicable by domestic courts, but in reality, a

true implementation of the obligations on ensuring access to environmental information and public participation enshrined in these treaties—both in relation to other Parties and its own population—happened much later.

Only in 2017, acting upon its obligations under the EU-Ukraine Association Agreement (Dragneva & Wolczuk, 2025), Ukraine transposed the EU's EIA Directive and finally introduced a European model of the EIA with public participation provisions thereof by passing the respective framework law and implementing regulations. Various sources confirm the compliance of the Law of Ukraine “On Environmental Impact Assessment” (Verkhovna Rada of Ukraine, 2017, hereinafter—the EIA Law) with international and EU standards (Raczyńska, 2020a, 2020b; UNECE, 2017a).

The EIA Law changed the permitting procedure for proposed activities which may have significant effects on the environment in Ukraine (Vyhryst, 2019). The EIA procedure requires major industrial and infrastructure projects to be assessed in terms of their environmental impacts and these impacts to be avoided, minimised or compensated for. This is of particular importance in view of Ukraine's reconstruction after the war, since EIA could be a proper tool to rebuilding a better and greener Ukraine.

All the indispensable elements of effective public participation in decision-making under the relevant EU directives and the Aarhus and Espoo conventions—such as public notification of the decision-making process, access to information relevant to the decision-making, collection of comments from the public, taking due account of it by a decision-making body, and informing the public of the decision taken along with the reasons and considerations on which the decision is based—were transposed into the EIA Law and further developed in the implementing regulations (UNECE, 1998, 2017b).

It is particularly noticeable that the EIA Law not only allows any member of the public—any natural or legal persons, their associations, organisations or groups—to submit any comments, information, analyses or opinions that they consider relevant to the proposed activity, but also introduces an instrument that effectively allows anyone to be notified of the decision-making and get access to any relevant information—a Single State Register on Environmental Impact Assessment (hereinafter—the EIA register, the register).

The EIA register is a nationwide online tool for carrying out the EIA procedures. The register allows proponents to apply for and obtain an EIA decision online. It also provides free public access to all documents originating throughout the EIA procedure and makes it possible to follow any EIA procedure in the country in real time. Since the launch of the EIA in Ukraine in 2017, not a single EIA procedure was conducted outside of the EIA register.

According to the Cabinet of Ministers of Ukraine Order “On Maintaining the Unified EIA Register”, all documents produced in the course of the EIA procedure are uploaded to the EIA register and upon submission/issuance automatically released via the register’s web-portal for the general public (Cabinet of Ministers of Ukraine, 2017). The documents/information uploaded to the EIA register most significant for this analysis would be (1) announcements of planned activities subject to EIA, (2) notifications on the commencement of public consultations, (3) EIA reports and (4) EIA decisions.

Before March 2022, all the above-mentioned documents were routinely and promptly uploaded and made publicly available via the register’s web-portal. The EIA register thus served the purpose of being the main instrument for: (1) notification of the public of the planned activity, launch of the EIA procedure and their possibilities to participate in it; (2) access to the information relevant to the decision-making; and (3) notification of the public of the results of the EIA procedure.

Apart from the main information source on the EIA procedures—the EIA register—the EIA Law also requires the proponents to notify the public affected or likely to be affected by the environmental decision-making by way of publication of announcements of planned activities subject to EIA, notifications on commencement of the public consultations as well as the EIA decisions and the final decisions in at least two printed media (local newspapers) as well as on the notice boards of the local authorities. Hard copies of the EIA reports have to be displayed for the public on the premises of the proponent, the public authority carrying out the EIA procedure and the local authorities on the territories likely to be affected by the proposed activity. Overall, the system provided for adequate, timely and effective means for both informing the public in the course of the EIA procedure and granting access to the information relevant to the respective environmental decision-making.

4 MEASURES INTRODUCED WITH THE BEGINNING OF THE WAR

On the night of the launch of the large-scale armed aggression by Russia against Ukraine, the President of Ukraine declared the martial law (President of Ukraine, 2022), which encompassed certain limitations on the rights and freedoms compared to the peacetime.

4.1 Exclusion of All Restoration Works from the Requirement to Carry Out the EIA

As early as on March 15, 2022, to speed up the reconstruction of the destroyed infrastructure, the Parliament of Ukraine passed the Law “On Amendments to Certain Legislative Acts of Ukraine Concerning Environmental Activities and Civil Protection for the Period of Martial Law” (Verkhovna Rada of Ukraine, 2022). Among other things, the Law amended the EIA Law to exclude all restoration works to eliminate the consequences of armed aggression and hostilities during martial law and in the reconstruction period after the war from the scope of the EIA Law. The adopted law automatically abolished the EIA procedure (and all public participation provisions within) for any restoration works both during the war and in an unspecified reconstruction period after the end of the hostilities. The law was signed by the President of Ukraine and entered into force on March 21, 2022.

4.2 Restricting Public Participation

By its Resolution No. 263 of March 12, 2022, the Cabinet of Ministers of Ukraine allowed ministries, other central and local bodies of executive power to cease or limit the operation of information, information and communication and electronic communication systems, as well as public electronic registers (Cabinet of Ministers of Ukraine, 2022a). The Ministry of Environmental Protection and of Natural Resources of Ukraine (hereinafter referred to as the Ministry of Environment) issued Order No. 159 “On temporary restriction of access to the Register”. In order to safeguard the data contained therein and to prevent any unauthorised actions with the information by the aggressor state, it shut down the EIA register.

Less than a month later, the Ministry of Environment realised the need to restore the operation of the EIA register. Despite the continuation of hostilities in the East and Southeast of the country, economic activity in the rest of Ukraine continued taking place, industrial and infrastructure facilities were planned, expanded, repurposed and relocated to safer regions, yet it was impossible to conduct EIA procedures outside of the EIA register. The Ministry of Environment thus repealed the previous order and issued a new one, which referred to the temporary restriction of external use of the EIA register (Order No. 177) (Ministry of Environmental Protection & of Natural Resources of Ukraine, 2022a). Access to the register was restored for authorised central and territorial authorities, as well as for economic entities undergoing the EIA procedure, upon their request.

Already on June 15, 2022, aware of potential illegality of conducting EIA without the participation of the public, in particular due to the validity of the provisions of the EIA Law on public access to information and participation in the procedure, the Ministry of Environment by another Order (No. 225) resumed the operation of the EIA register for external use, but with serious restrictions for the public (Ministry of Environmental Protection & of Natural Resources of Ukraine, 2022b). In particular the following information was kept classified for external use: 1) all EIA decisions issued prior to February 24, 2022; 2) EIA reports; 3) Google maps showing the approximate location of the planned activity in each EIA case. According to the official notification from the Ministry of Environment, the public was promised to be provided with the EIA documentation (including EIA reports) in pending EIA cases upon request after identification of the persons requesting it. Contrary to what was sanctioned by the governmental Resolution No. 263, the Ministry of Environment by its latest order limited not only the operation of the EIA Register but halted the notification of the public on EIA procedures, restricted access to EIA documentation in pending cases and classified EIA documentation in EIA cases finalised prior to the beginning of the war.

4.2.1 Failure to Notify the Public

Although the Order 255 did not instruct the administrator of the EIA register (i.e., the Ministry of Environment) to refrain from posting announcements of planned activity subject to EIA, notifications on commencement of the public consultations, as well as information on

the results of the EIA procedure, the Ministry of Environment ceased to inform the public via the register's web-portal.

According to the EIA Law, the duty of informing the public in the course of the EIA procedure is shared between a public authority and a proponent. The EIA Register is the only tool by which a public authority communicates with the public. Having suspended the operation of the register and later on having been operating the register in “the limited form”, the Ministry of Environment effectively ceased notifying the public in the course of EIA procedures. No alternative measures of informing the public (e.g., individual notifications) were considered and implemented. To get access to the documents that were meant to be actively disseminated by the authorities—an announcement of planned activity subject to EIA, a notification on commencement of the public consultation period—similarly to getting access to the EIA report—one had to submit a written request (see next section for the details).

According to the EIA Law, the obligation to notify the public via other means (the mass media, notice boards of local self-government bodies, other public places) lies solely with the proponents of planned activities (Verkhovna Rada of Ukraine, 2017, Art.3). However, the Ministry of Environment gave no directives on how the proponents are to exercise public notification obligations under the challenging circumstances of the war. Nevertheless, the Ministry of Environment and regional environmental authorities carrying out the EIA procedure continued to issue EIA decisions. Since the beginning of the war and up until the end of 2023, authorities had carried out nearly 2,400 EIA procedures (EIA Register, n.d.). Many more can be expected during the rebuilding phase both during and after the war. According to the Kyiv School of Economics (2024), as of February 2024, due to the war, Ukraine's infrastructure and industry suffered \$155 billion in damages. All of that and much more is planned to be rebuilt and many of these projects would fall within the scope of the EIA Law.

4.2.2 *Shortening Time Frames for Public Participation*

In 2022, the Ministry of Environment (2022) announced that members of the public may submit comments and suggestions regarding the planned activity within 25 working days on those EIA cases on which EIA reports have been uploaded to the register after March 22, 2022 (Ministry of Environmental Protection & of Natural Resources of Ukraine, 2022c). However, according to the EIA Law, the public should have a minimum

of 25 and up to 35 business days for submission of comments on the EIA report starting from the date the respective documents are made publicly available. Provided that in the times of war travelling and access to the premises of public authorities and proponents are problematic in many regions of Ukraine, the new scheme of accessing the EIA documents required the public to submit a request to the authority. With a minimum response time of five business days, the public consultation period was reduced further by this period in practice.

4.2.3 *Restricting Public Access to EIA Reports*

In its 2022 official note, the Ministry of Environment (2022) explained that the public may access the EIA documentation for the purpose of discussion in pending EIA cases upon request through an online form and after personal identification (Ministry of Environmental Protection & of Natural Resources of Ukraine, 2022c). In addition to the traditional requisites as stated in the Law of Ukraine “On Access to Public Information”, the form required passport details, date of birth, telephone number and an IP address. As more than once noted by NGOs, failure to submit an IP address or any of the personal details rendered a denial in access.

According to the EIA Law, the EIA register is one of two ways a public authority, performing an EIA procedure, makes EIA documentation available to the public (Verkhovna Rada of Ukraine, 2017). The other way is providing documentation for inspection on the premises of the respective public authority. This way of getting access to the EIA report even in peacetime was only used by representatives of the public residing in the capital (in case the Ministry of Environment was performing the EIA) or in other regional centres (regional authorities performing EIA procedure).

A duty to provide an EIA report on the premises of a proponent, other public places of the choice of a proponent and on the premises of the local authorities lies with the proponent. Due to the war, access to the premises of many local authorities remains restricted and travelling across Ukraine became complicated. Thus, the need for online documentation has risen. The provision of the EIA documentation upon request has therefore become the main way of getting access to the information relevant to the decision-making. The idea was that both requests and replies with information were to be submitted via email. This, however, in practice was complicated by technical problems. For example, the size of a file with an average EIA report usually exceeds the limit of MBs that could

be sent via most governmental email servers. And whereas some authorities were willing to solve this problem by using special software or cloud services, others remained idle.

4.2.4 *Classifying Information for Security Reasons*

Based on the provision of the Order No. 225 that limited access to Google maps, showing the approximate location of the planned activity, when providing EIA documentation on pending EIA cases, many regional authorities carrying out EIA procedures erased all information related to its location making it effectively impossible to comment on the impact of the proposed activity on the environment (Ministry of Environmental Protection & of Natural Resources of Ukraine, 2022b). For security reasons, the pre-war EIA reports, EIA decisions etc. also became no longer publicly available either via the register, or upon a request. On multiple occasions the Ministry of Environment denied requests of NGOs to provide copies of these decisions. This was justified by the need to protect sensitive information on the location of facilities that potentially could be targets of the missiles strikes.

5 LEGALITY OF THE MEASURES IN LIGHT OF THE CONSTITUTION OF UKRAINE AND DOMESTIC LEGISLATION

The Constitution of Ukraine guarantees that constitutional rights and freedoms of a person and a citizen cannot be limited, except in cases provided for by the Constitution. One of these cases is the introduction of martial law (Verkhovna Rada of Ukraine, 1996, Article 64), during which certain restrictions can be established with an indication of their validity period. Such restrictions may refer, in particular, to the rights provided for in Articles 34 and 50, namely the right to freely collect, store, use and disseminate information and the right to freely access and disseminate environmental information. Article 34 provides that even in peacetime the information rights could be limited by law in the interests of national security or territorial integrity. In contrast, the right provided for under Article 40, namely the right to address appeals to the state authorities, which are obliged to consider the appeal and provide a reasoned answer within the period established by law, is absolute and cannot be limited even in times of martial law.

Issues of access to information, including environmental information, and participation in the EIA procedure are regulated by the Law of Ukraine “On Access to Public Information” and the EIA Law (Verkhovna Rada of Ukraine, 2011, 2017). Until December 2023, these laws had not undergone any relevant changes and all their respective provisions remained in force. Furthermore, although the Constitution of Ukraine provides for a possibility to temporarily restrict the right to environmental information (Verkhovna Rada of Ukraine, 1996, Article 50) during martial law, the decree of the President of Ukraine (2022) introducing martial law, when listing the constitutional rights to be restricted, did not mention the right to environmental information. It did, however, mention the right to information.

The Law of Ukraine “On the Legal Regime of the Martial Law” (hereinafter referred as “Martial Law”) in Article 8 lists the measures of martial law and lays the legal foundations for temporary restrictions of constitutional rights and freedoms during wartime (Verkhovna Rada of Ukraine, 2015). None of the measures addresses additional restrictions on access to information or public participation in the process of making administrative decisions. However, Clause 11 of Part 1 of Article 8 allows to regulate by decision of the Cabinet of Ministers of Ukraine the transfer of information through computer networks, and Clause 22 provides for additional measures to strengthen the protection of state secrets. Acting upon the Presidential decree declaring the martial law and Article 8 of the Martial Law, in March 2022 the Cabinet of Ministers of Ukraine through Resolutions No. 314 and No. 263 instructed the ministries, other central and local bodies of executive power to cease or limit the operation of information, information and communication and electronic communication systems, as well as public electronic registers (Cabinet of Ministers of Ukraine, 2022a, 2022b).

Contrary to what was instructed by the Cabinet of Ministers of Ukraine, the measures introduced by the Ministry of Environment limited not only the operation of the EIA register, but also the access to the EIA documentation as such (both in pre-war and pending cases) and possibilities of the public to participate in the EIA procedure. The latter two had no legal ground and contradicted the provisions of the Constitution and the laws of Ukraine, in particular the EIA Law and Law of Ukraine “On Access to Public Information” that have not been amended, revoked or suspended in force in any way in terms of their provisions on

access to information and public participation in decision-making since the beginning of the war.

Thus, based on the provisions of the Constitution of Ukraine and the Martial Law, in terms of access to information and public participation in the EIA procedure the Ministry of Environment could have legitimately limited exclusively the operation of the EIA register. At the same time, the regime of access to public information, including environmental information, the procedure for accessing (via the Register, upon request, through personal access) the information that is relevant for the decision-making process and the procedure of public participation (except for aspects of EIA register functioning) should have remained unchanged and regulated by the laws of Ukraine on Access to Public Information, on Information, on EIA and relevant by-laws.

6 CONFORMITY OF THE MEASURES WITH THE EU'S EIA DIRECTIVE

In 2010, Ukraine acceded to the treaty establishing the Energy Community and by doing that committed to implementing a number of energy-related EU *acquis* including some major environmental directives, in particular the EIA Directive. In 2014, having entered into the EU-Ukraine Association Agreement, Ukraine had also undertaken an obligation to implement the said directive (EU-Ukraine, 2014). Ukraine has done so in 2017 by creating a domestic legal framework on EIA. Finally, as an EU candidate country, Ukraine is obliged to implement EU law in view of a future EU membership.

First of all, it is worth noting that there are no specific provisions in the EIA Directive providing for a different legal regime applicable during wartime. This means that even in these extraordinary circumstances the directive and all its requirements continue to apply. The directive, however, envisages certain exceptions and derogation possibilities tied to national defence concerns. Yet Ukraine departed far away from what is allowed.

6.1 Exclusion of Restoration Works from the Requirement to Carry Out the EIA

As described in Sect. 4.1 above, in March 2022, the EIA Law was amended to exclude all war-related restoration works from its scope. The

EIA Directive, on the other hand, clearly requires that projects which are likely to have significant effects on the environment are made subject to an EIA (European Parliament & Council, 2011). The Directive, however, in Article 1.3. allows the Member States to decide, on a case-by-case basis and if so provided under national law, not to apply the Directive to projects having defence or the response to civil emergencies as their sole purpose, if they deem that such application would have an adverse effect on those purposes.

In the authors' view "restoration works to eliminate the consequences of armed aggression and hostilities" that are proposed activities within the scope of the Directive, should not automatically qualify as serving "national defence" or "the civil emergencies response" purposes. Rather, it is only those proposed activities that are urgently needed to support the war effort during the war or to ensure public safety in case of a civil emergency that might qualify. A similar approach was taken by the Aarhus Convention Compliance Committee (2023).

Furthermore, to come within the scope of Article 1.3 of the EIA Directive projects must not only have specified purposes—the Member State must also have deemed that carrying out the EIA procedure would have an adverse effect on those purposes. Unless both of these conditions are fulfilled, the Directive does not allow proposed activities within the scope of the Directive to be permitted until they have been subject to an EIA procedure. Therefore, it would not be consistent with the EIA Directive if proposed activities within the scope of the Directive were, either during the ongoing war or once it is over, to be exempted from the requirement to undergo an EIA procedure simply by virtue of their being "restoration works to eliminate the consequences of armed aggression and hostilities".

Exclusion of restoration works from the requirement to carry out the EIA (altogether with the public participation therein) in the post-war period is even less legitimate. Given the length and particular circumstances of the war, once the hostilities have ended it would be much more difficult to claim that the restoration works are urgently needed to support the war effort or to ensure public health and well-being in the aftermath of the hostilities. Furthermore, given that both the Government of Ukraine and its international partners had committed to environmental recovery of Ukraine (Ukraine Recovery Conference, 2022), this measure seems counterproductive. If anything, EIA, strategic environmental assessment and other instruments allowing to incorporate environmental considerations into strategic/planning/project level

decision-making would play a major role if Ukraine is to be rebuilt better and greener.

Finally, the restrictions could have been a stumbling block on Ukraine's path to the EU. As a candidate country, Ukraine is obliged to implement the EU *acquis*. Given the close connection of Ukraine's rebuilding and EU accession, unjustified restrictions of the EIA procedure could have been particularly problematic.

6.2 *Restricting Public Participation*

6.2.1 *Failure to Notify The Public*

According to Article 6.2 of the EIA Directive, in order to ensure the effective participation of the public concerned in the decision-making procedures, the public shall be informed electronically and by public notices or by other appropriate means, of various matters. Instead of offsetting the shortcomings of usual means of notification in the times of active war and finding different effective ways to notify the public (individual notification of the long-known NGOs, extracting potentially sensitive information and posting the rest in the usual way on the EIA register etc.) the Ministry of Environment took the easiest way out by using the national defence argument and shutting down the only channel it used to notify the public. This bluntly disregarded the EIA Directive's requirements to ensure adequate and effective notification of the public.

6.2.2 *Shortened Time Frames*

The EIA Directive in Article 6.7 requires that the time frames for consulting the public concerned on the EIA report not be shorter than 30 days. Thus, the measures adopted by the Government of Ukraine, i.e., 25 working days, of which in practice at least five working days have to be subtracted, were not consistent with the minimal requirement for the time frame to public consultations enshrined in the EIA Directive.

6.2.3 *Restricting Public Access to EIA Reports and Documentation*

According to Article 5 and Article 6.3 of the EIA Directive, Member States shall ensure that, within reasonable time frames, any information gathered pursuant to Article 5 (including the EIA report) is made available to the public concerned. Thus, the temporary suspension of

unlimited access to the EIA register during the ongoing war and provision of access to the EIA register solely upon request is not inconsistent with Articles 5 and 6 of the EIA Directive, although it does go against a non-regression principle of international environmental law.

6.2.4 *Classifying Information for Security Reasons*

In a democratic society, the rights and freedoms may be limited only for the purpose of protection of fundamental democratic values in that society (Barak, 2012, p. 326). According to the European Convention of Human Rights, the Constitution of Ukraine as well as the EIA Directive and the Directive 2003/4/EC on public access to environmental information—national defence and public security are legitimate aims for the limitation of rights to information and participation (Council of Europe, 1953; European Parliament & Council, 2003, 2011; Verkhovna Rada of Ukraine, 1996). In this aspect there is little doubt that the measures adopted to restrict these rights for the reasons of national defence in the midst of an actual war served a legitimate goal. However, the question of proportionality arises.

According to Article 5, where an EIA is required, the developer shall prepare and submit an EIA report that shall include among other things: a description of the project comprising information on the site, design, size and other relevant features of the project. ANNEX IV to the EIA Directive specifying the information to be included in the EIA report lists a description of the project, including in particular, a description of the location of the project.

On the other hand, Article 10 of the EIA Directive establishes that the provisions of this Directive shall not affect the obligation on the competent authorities to respect the limitations imposed by national laws, regulations and administrative provisions and accepted legal practices with regard to commercial and industrial confidentiality, including intellectual property, and the safeguarding of the public interest.

It could be well argued that national defence in the time of a war is indeed a public interest and thus should be considered when releasing sensitive information on the location of facilities that potentially could be targeted by the adversary. On a very similar legal issue, the Aarhus Convention Compliance Committee (2023) concluded that in the exceptional situation of an ongoing war, the Party concerned may, for reasons of national defence or public security, decide to redact information that would enable the identification of the precise location of the proposed

activity. However, the general location of the activity, albeit not its precise location, must be indicated.

It would therefore not be in breach of the EIA Directive to classify the exact location of the proposed activity that potentially may have relevance for national defence (military factories and facilities, chemical plants, energy and other critical infrastructure, etc.). However, many EIA cases do not have such relevance. Municipal waste treatment facilities and wastewater treatment plants, deforestation and large-scale logging, animal and fish farms, quarries and open-cast mining of clay, sand, limestone, granite, peat, etc., food industry facilities, textile, leather, wood and paper industry facilities, tourism and leisure infrastructure—have little bearing on national defence. Yet the Ministry of Environment classified their location too. Furthermore, instead of extracting the sensitive information on a case-by-case basis and releasing the rest of the documents—as prescribed by EU Directive 2003/4/EC and the Law of Ukraine “On Access to Public Information”—the Ministry of the Environment terminated the operation of the EIA register and in pre-war cases stopped providing the documents even upon request.

Looking at the measures taken by the Government of Ukraine with regard to the EIA procedure, it seems that by significantly restricting the disclosure of documents that might include sensitive information relevant for national defence and public security, the government would produce the desired result of limiting the enemy's access to the said information. However, was that absolutely necessary? Were there other less restrictive measures available for achieving the same legitimate aims and did the government strike a fair balance between the two competing public interests—national defence and public security, on one hand, and environmental protection and democracy of decision-making process, on the other?

The ECtHR refers to the standard of using the least restrictive measure for achieving the legitimate aim. In the ECtHR case-law (*Nada v. Switzerland*), it is emphasised that a measure is proportionate in cases when there is no possibility of recourse to an alternative measure that would cause less damage to the fundamental right in issue while fulfilling the same aim. It seems that there would have been a number of less restrictive measures that the Ministry of Environment could have taken to achieve the same legitimate aim. The most obvious ones would have been the following two:

- 1) To allow authorised access to the EIA register. That—on one hand, would allow to identify the persons getting access to the documents and thus achieve the same level of protection in terms of the sensitive information as by requiring a written request with personal details, yet allow the public interested in the decision-making process to be notified, spare the public the necessity to send requests, and retain the time frames for public participation as required by international standards and domestic law etc.
- 2) To redact sensitive information from the EIA reports and continue to operate the EIA registers as before with provision of the redacted sensitive information only upon a justified request. This too would fully serve the national defence and public safety purposes, yet allow the public to almost fully enjoy their participatory rights in the EIA procedures in the wartime.

Other alternative and much less restrictive options as subscription lists, individual notifications or any combination of the above also could have been considered with achieving the same if not better level of protection of national defence and public safety interests.

Having a vast variety of alternative less restrictive measures at hand that allow for achieving the same level of protection for the legitimate aims and still opting for ones that effectively diminished public's right to participate in environmental decision-making, the Ministry of Environment failed to strike a fair balance between the competing interests. This became even more apparent with the war turning into a long-lasting challenge, growth of economic activity in the safer parts of Ukraine on the same if not bigger scale than in peacetime, ambitious reconstruction plans to rebuild a better and greener Ukraine, and the overall struggle of the people of Ukraine for democratic values, green development and accession to the EU.

7 DOMESTIC AND INTERNATIONAL PRESSURE AGAINST WARTIME RESTRICTIONS

The adopted measures resulted in a major domestic and international reaction. Ukrainian environmental NGOs launched a rigorous campaign for winning back their freshly acquired participatory rights and when the Ministry of Environment initiated a legislative process to revise and legitimise the new regime, took an active role in the drafting process. In

parallel to that, the issue was brought to the attention of the Aarhus Convention Compliance Committee, which upon considering the issue rendered its very straightforward recommendations. In combination, these efforts led to the adoption by the Parliament of Ukraine of amendments to the EIA Law that 1) overturned the shrinking of the scope of the EIA, which implies that reconstruction projects will be subject to EIA; and 2) introduced a new EIA register that on one hand is open to the public, but on the other takes into account the context of the war by requiring authorization and introducing a mechanism for case-by-case limited access to sensitive information. The case confirms that the “sandwich strategy” (Nitsova et al., 2018) still has a role to play with regard to Ukraine’s compliance with EU rules.

8 CONCLUSIONS

In the heist of hostilities, the Ministry of Environment adopted a series of measures and practises that restricted the public’s ability to have a say in major industrial and infrastructure projects during both the ongoing war and in the post-war reconstruction period. The analysis shows that the adopted measures were not in line with the Constitution of Ukraine and domestic laws, because the Ministry of Environment and other authorities carrying out the EIA procedure went far beyond what was sanctioned by the martial law and arbitrarily limited the public’s rights in the EIA procedure.

Based on the provisions of the Constitution of Ukraine and the Martial Law, in terms of access to information and public participation in the EIA procedure, the Ministry of Environment could have legitimately limited exclusively the operation of the EIA register. At the same time, the regime of access to public information, the procedure for accessing the information that is relevant for the decision-making process and the procedure of consultations with the public (except for aspects of EIA register functioning), should have remained unchanged and regulated by the laws of Ukraine on Access to Public Information, on Information, on EIA and relevant by-laws.

Although most of the adopted measures served the legitimate aim of protecting national defence and public security interests, the Ministry of Environment failed to strike a fair balance between these interests and the competing interests of transparency, democratic decision-making and green development. Most of the adopted measures also failed to

comply with EU environmental *acquis* that by virtue of the EU-Ukraine Association Agreement are binding on Ukraine.

As a candidate country expressing a strong will to quickly join the EU, Ukraine must comply with the EU *acquis*. It was therefore strongly advocated by the domestic civil society to reconsider the adopted measures in order to ensure that they are fully compatible with relevant EU *acquis*. In addition, the measures should strictly follow the proportionality principle requiring all human rights restrictions to be adopted in the service of a legitimate aim and be the least restrictive measures for achieving said aim. Striking a fair balance between the national defence on the one hand and democratic decision-making and green development on the other was paramount in the modern, soon to become EU Member State Ukraine. To a major extent that balance was found by the amendments to the EIA Law effective since December 2023.

REFERENCES

- Aarhus Convention Compliance Committee. (2023). *Recommendations with regard to request for advice ACCC/A/2022/3 by Ukraine. Adopted by the Committee on 9 June 2023*. https://unece.org/sites/default/files/2023-06/A3_Ukraine_advice_adv_unedited.pdf
- Barak, A. (2012). *Proportionality: Constitutional rights and their limitations*. Cambridge University Press.
- Blanchard, M. A. (1992). Free expression and wartime: Lessons from the past, hopes for the future. *Journalism & Mass Communication Quarterly*, 69(1), 5–17.
- Brewin, F.A. (1940/41). Civil liberties in Canada during wartime. *Bill of Rights Review*, 1, 112–121.
- Chafee, Z., Jr. (1919). Freedom of speech in war time. *Harvard Law Review*, 32(8), 932–973.
- Cabinet of Ministers of Ukraine. (2017). Order “On Maintaining the Unified EIA Register”, approved by the Decision #1026 of the Cabinet of Ministers of Ukraine. <https://zakon.rada.gov.ua/laws/show/en/1026-2017-%D0%BF?lang=uk#Text>
- Cabinet of Ministers of Ukraine. (2022a). Resolution of the Cabinet of Ministers of Ukraine No. 263 “Some issues of ensuring the functioning of information and communication systems, electronic communication systems, and public electronic registers under martial law”. <https://zakon.rada.gov.ua/laws/show/263-2022-%D0%BF#Text>
- Cabinet of Ministers of Ukraine. (2022b). Resolution of the Cabinet of Ministers of Ukraine No. 314 “Some issues of ensuring the conduct of economic

- activity under martial law". No 314. <https://zakon.rada.gov.ua/laws/show/314-2022-%D0%BF#Text>
- Council of Europe. (1953). European Convention on Human Rights. https://www.echr.coe.int/documents/d/echr/convention_ENG
- Dragneva, R., & Wolczuk, K. (2025). Integration and modernisation: EU's Association Agreement with Ukraine. In M. Rabinovych & A. Pintsch (Eds.), *Ukraine's thorny path to the EU: From "integration without membership" to "integration through war."* Palgrave Macmillan.
- Edelenbos, J., Steijn, B., & Klijn, E.-H. (2010). Does democratic anchorage matter? An inquiry into the relation between democratic anchorage and outcome of Dutch environmental projects. *The American Review of Public Administration*, 40(1), 46–63. <https://doi.org/10.1177/0275074009332064>
- EIA register. (n.d.). *All registration cases*. Retrieved December 12, 2023 from <http://eia.menr.gov.ua/uk/cases>
- Environment-People-Law. (2021). *The environmental democracy index: An updated score for Ukraine*. <https://epl.org.ua/wp-content/uploads/2021/04/THE-ENVIRONMENTAL-DEMOCRACY-INDEX.pdf>
- European Commission. (2023). *Ukraine 2023 report*. SWD(2023) 699 final, Brussels, November 8, 2023. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52023SC0699>
- European Parliament and Council. (2003). Directive 2003/4/EC on public access to environmental information. <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:041:0026:0032:EN:PDF>
- European Parliament and Council. (2011). Directive 2011/92/EU (as amended by 2014/52/EU) on the assessment of the effects of certain public and private projects on the environment, December 13, 2011, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011L0092>
- EU-Ukraine. (2014). Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part. *Official Journal of the European Union*, L 161/3, 29.5.2014, 3–2137.
- Fischer, F. (2018). Environmental democracy: participation, deliberation and citizenship. In M. Boström & D. J. Davidson (Eds.), *Environment and society* (pp. 257–279). Palgrave Macmillan. https://doi.org/10.1007/978-3-319-76415-3_12
- Freyburg, T., Lavenex, S., Schimmelfennig, F., Skripka, T., & Wetzels, A. (2015). *Democracy promotion by functional cooperation: The European Union and its Neighbourhood*. Palgrave Macmillan.
- Gearty, C. (2007). Terrorism and human rights. *Government and Opposition*, 42(3), 340–362.
- Glucker, A. N., Driessen, P. P. J., Kolhoff, A., & Runhaar, H. A. C. (2013). Public participation in environmental impact assessment: Why, who and how?

- Environmental Impact Assessment Review*, 43, 104–111. <https://doi.org/10.1016/j.eiar.2013.06.003>
- Kyiv School of Economics. (2024). *\$155 billion – the total amount of damages caused to Ukraine’s infrastructure due to the war, as of January 2024*. KSE Institute. <https://kse.ua/about-the-school/news/155-billion-the-total-amount-of-damages-caused-to-ukraine-s-infrastructure-due-to-the-war-as-of-january-2024/>
- Lara, B. (2015). The failure of environmental international law during times of war. *University of Baltimore Journal of Land and Development*, 4(2), 141–164.
- May, E. T. (2011). Security against democracy: The legacy of the Cold War at home. *Journal of American History*, 97(4), 939–957. <https://doi.org/10.1093/jahist/jaq026>
- McEldowney, J. F. (2005). Political security and democratic rights. *Democratization*, 12(5), 766–782. <https://doi.org/10.1080/13510340500322249>
- Ministry of Environmental Protection and of Natural Resources of Ukraine. (2022a). Order “On temporary restriction of access to the Unified Register of Environmental Impact Assessment”, No 177. <https://zakon.rada.gov.ua/rada/show/v0177926-22#Text>
- Ministry of Environmental Protection and of Natural Resources of Ukraine. (2022b). “On resuming of partial access to the Unified Register of Environmental Impact Assessment”, No. 225. <https://mepr.gov.ua/wp-content/uploads/2023/04/Nakaz-225-vidkrytya-Reyestru-2.pdf>
- Ministry of Environmental Protection and of Natural Resources of Ukraine. (2022c). *Explanation to representatives of the public*. <https://mepr.gov.ua/diyalnist/otsinka-vplyvu-na-dovkilliya/roz-yasnennya-predstavnykam-gromadskosti/>
- Nada v. Switzerland, App no. 10593/08 ECtHR (September 12, 2012).
- Nitsova, S., Pop-Eleches, G., & Robertson, G. (2018). *Revolution and reform in Ukraine: Evaluating four years of reform*. PONARS Eurasia.
- O’Brien, I. M. (2007). Citizenship, rights and emergency powers in Second World War Australia. *Australian Journal of Politics and History*, 53(2), 207–222. <https://doi.org/10.1111/j.1467-8497.2007.00455.x>
- President of Ukraine. (2022). Decree of the President of Ukraine No. 64/2022 “On the imposition of martial law in Ukraine”. <https://www.president.gov.ua/documents/642022-41397>
- Raczyńska, W. (2020a). *Public participation procedure in the new Ukrainian legal framework on environmental impact assessment in the light of the requirements of international, EU and Polish law: Summary*. Uniwersytet Opolski. http://awanse.uni.opole.pl/wp-content/uploads/streszczenie-EN_Raczyńska.pdf
- Raczyńska, W. (2020b). Public participation procedure in the new Ukrainian legal framework on environmental impact assessment in the light of the requirements of international, EU and Polish law. [Doctoral dissertation,

- Uniwersytet Opolski]. <https://repo.uni.opole.pl/fileView.seam?fileName=Raczynskapraca+W.%2C+Procedura+udzia%C5%82u.pdf&affil=FMPCS&entityType=phd&fileTitle=Raczynskapraca+W.%2C+Procedura+udzia%C5%82u.pdf+%2F+1+MB+%2F+%2F+&lang=en&fileId=UOaa4680e58b694d09a5672a225103eb8f&cid=1059371>
- Shyrokykh, K., & Melen-Zabramna, O. (2025). Europeanization of Ukraine's policy on environment and climate: Instrumental and anticipatory compliance. In M. Rabinovych & A. Pintsch (Eds.), *Ukraine's thorny path to the EU: From "integration without membership" to "integration through war."* Palgrave Macmillan.
- Smyth, D. (2013). Avoiding bloodshed? US Journalists and censorship in wartime. *War & Society*, 32(1), 64–94. <https://doi.org/10.1179/0729247312Z.00000000017>
- Ukraine Recovery Conference. (2022). *Environmental recovery*, Lugano, July 4–5, 2022. https://global-uploads.webflow.com/621f88db25fbf24758792dd8/62bd020b4b6cf255d85115aa_ENG_Environmental%20Recovery_URC.docx.pdf
- Ukrainian Nature Conservation Group. (n.d.). *Environmental impact assessment*. <https://uncg.org.ua/en/cia/>
- UNECE. (2017a). *Compliance by Ukraine with its obligations under the Convention: Report of the Compliance Committee to the Sixth session of the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters*, Budva, Montenegro, September 11–13, 2017. https://unece.org/fileadmin/DAM/env/pp/mop6/Documents_acc/ECE.MP.PP.2017.45_advance.pdf
- UNECE. (2017b). *Convention on environmental impact assessment in a trans-boundary context*, February 25, 1991. <https://unece.org/environment-policy/environmental-assessment/text-convention>
- UNECE. (1998). *Convention on access to information, public participation in decision-making and access to justice in environmental matters*. <https://unece.org/DAM/env/pp/documents/cep43e.pdf>
- UNEP. (2010). *Guidelines for the development of national legislation on access to information, public participation and access to justice in environmental matters*. <https://www.unep.org/resources/publication/guidelines-development-national-legislation-access-information-public>
- United Nations Conference on Environment and Development. (1992). *Rio Declaration on environment and development. A/CONF.151/26* (Vol. I). https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf
- Verkhovna Rada of Ukraine. (1996). Constitution of Ukraine (as of 2021). <https://zakon.rada.gov.ua/laws/show/en/254к/96-бп#Text>

- Verkhovna Rada of Ukraine. (2011). Law of Ukraine “On Access to Public Information”, No. 2939-VI, <https://zakon.rada.gov.ua/laws/show/2939-17?lang=en#Text>
- Verkhovna Rada of Ukraine. (2015). Law of Ukraine “On the Legal Regime of the Martial Law”, No 389-VIII. <https://zakon.rada.gov.ua/laws/show/389-19#Text>
- Verkhovna Rada of Ukraine. (2017). Law of Ukraine “On Environmental Impact Assessment”, Nr. 2059-VIII. <https://zakon.rada.gov.ua/laws/show/2059-19#Text>
- Verkhovna Rada of Ukraine. (2022). Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine on Environmental Activities and Civil Protection for the Period of Martial Law”, No. 2132-IX. <https://zakon.rada.gov.ua/laws/show/2132-20#Text>
- World Resources Institute. (2015). *Environmental democracy index: Background and methodology*. <https://environmentaldemocracyindex.org/node/2728.html>
- Vyhryst, S. (2019). Introduction of the EU model of EIA and SEA in Ukraine. *Ukrainian Journal of International Law*, 2/2019, 56–59. <https://doi.org/10.36952/uail.2019.2.56-59>

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Europeanisation of Ukraine's Policy on Environment and Climate: Instrumental and Anticipatory Compliance

Karina Shyrokykh and Olga Melen-Zabramna

1 INTRODUCTION

In comparison to other regional non-European Union (EU) neighbours, Ukraine has the highest environmental protection score, ranking first in quality of environmental regulation (Wolf et al., 2022). Renewable energy generation was growing in Ukraine before Russia's full-scale invasion; solar and wind energy generation, for example, constituted about 12.4% of the country's capacity in 2020 (Johansmeyer, 2022). Although Ukraine continues environmental and climate legislation reforms, some green transition policies were put on hold due to the full-scale war. For example, reports on the Monitoring, Reporting, and Verification (MRV) of emissions, which became mandatory in 2021 and were originally scheduled for submission in 2022, have been postponed (Shyrokykh & Zasiadko, 2023). Similarly, the adoption of the Implementation Action Plan to the

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Nationally Determined Contribution (NDC), a document that embodies concrete steps to comply with the goals of the Paris Agreement, has been postponed.

Since the ratification of the Association Agreement (AA) with the EU, the document has guided Ukraine's alignment with the EU *acquis* in the domain of environment and climate. Since recently, in parallel to implementing the provisions of the AA, Ukraine's governance in this domain has been framed with reference to the European Green Deal (EGD). For example, in 2020, the government of Ukraine set up a working group to coordinate efforts for climate change mitigation within the framework of the EGD (Cabinet of Ministers of Ukraine, 2020a). Likewise, in 2023, the Cabinet of Ministers of Ukraine adopted the Action Plan for the Implementation of the Strategy of Foreign Policy of Ukraine, which includes concrete steps to implement the EGD (Cabinet of Ministers of Ukraine, 2020b).

The gradual movement towards alignment with the norms of the EGD presents an interesting puzzle. While having not yet fully implemented the AA, Ukraine introduced policies meant to align its legislation with a more ambitious policy framework—the EGD. Interestingly, compliance with the EGD's norms is not part of the EU's current conditionality attached to European integration. This presents an empirical puzzle.

We address a noticeable gap in the Europeanisation literature. In contrast to democratisation, EU regulatory transfer, and good governance, the topic of environmental and climate governance in the EU neighbourhood is largely understudied. This subject deserves more scholarly attention as in general, EU's close neighbours have been exposed to its foreign policy instruments more regularly than other countries (Lavenex, 2015; Lavenex & Kunz, 2008), including in the field of environmental and climate governance (Shyrokykh, 2021). It also has a clear policy relevance. For instance, at present, a significant 25% of funding allocated to the neighbourhood is dedicated to advance climate-related goals within this region (Di Ciommo et al., 2018, p. 14). Therefore, understanding what drives compliance in this policy domain and the causal mechanisms behind it is important for policy-making.

In the few existing works that deal with either environmental or climate governance in the region, scholars mostly focus on detecting the effects of the EU's interventions (e.g., Buzogány, 2013; Freyburg et al., 2015, pp. 184–198). Another strain of the Europeanisation literature attempts to explain selective compliance and the factors obstructing policy change

to align with EU norms. In explaining the impact of the EU's climate governance, much of this literature seeks to demonstrate that domestic conditions are often not conducive to reforms (Buzogány, 2009, 2013). There are also works that look into the drivers of the EU's engagement in climate governance in the neighbourhood, distinguishing between the self-interest of the EU and the functional needs of the partner countries (Shyrokykh, 2021).

In this chapter, we ask: *What drives the Europeanisation of Ukraine's environmental and climate policy and why?* We define Europeanisation as a gradual process of alignment of national policies with those of the EU. By addressing this research question, we contribute to the literature on the EU's climate and environmental governance in the neighbourhood. Moreover, we add to Europeanisation literature by theorising anticipatory compliance as one of the paths to Europeanisation.

To address the research question, we build on the analysis of Ukrainian policies in the domain of environment and climate. Building on content analysis of legislative and policy documents adopted by Ukraine, we demonstrate that the process of alignment with the provisions of the AA and the EGD is driven by two parallel compliance mechanisms: *instrumental compliance* with provisions of the AA, as well as *anticipatory compliance* with norms of the EGD while planning for future European integration and post-war rebuilding. The first track follows the logic of cost–benefit calculations, as described in much of the Europeanisation literature (e.g., Schimmelfennig, et al., 2003; Shyrokykh et al., 2025). Aspiring to integrate with the EU, Ukraine complies with the provisions of the AA. Ukraine's alignment with the provisions of the EGD constitutes a parallel process, which we call anticipatory compliance. The underlying logic behind anticipatory compliance, we argue, is strategic planning of the future in the context of uncertainty. Finding itself in an uncertain context—in a situation of somehow protracted European integration (2014–2022) and lately in the context of the full-scale war (2022–till present)—as well as understanding its political and economic dependency on the EU, Ukraine's government realises the need for alignment with both current and possible future policies of the EU. We argue that forward-looking anticipatory compliance and instrumental compliance jointly drive Ukraine's Europeanisation of its policy on environment and climate.

The remainder of the chapter is structured as follows. First, we describe the EU's role in promoting environmental and climate norms in Ukraine.

Then, we review existing compliance and Europeanisation literature with a focus on environmental governance and develop the theoretical concept of anticipatory compliance. The empirical approach is specified in the fourth section, followed by an empirical analysis. The concluding section summarises the findings and discusses their implications for the rebuilding of Ukraine.

2 BACKGROUND

The EU is an international environmental and climate leader with a long track record of engagement in global governance of related matters. More recently, particularly since the Lisbon Treaty which made climate change mitigation and adaptation objectives of EU foreign policy, the EU has gained a reputation for being *the* global leader in this domain, with major attention being paid to its immediate neighbours (Shyrokykh, 2021, 2022; European Council, 2020). The EU acknowledges its member states' vulnerability to the climate change risks in third countries and the corresponding interdependencies with its neighbours (European Commission, 2018; Shyrokykh et al., 2023). To mitigate such risks, the EU has developed various bilateral and multilateral projects that aim at building political will and capacity in partner countries in order to support them in their environmental and climate governance (Ibid).

The inception of the EU's cooperation with its neighbours on environment and climate dates back to the 1990s. Environmental protection and mitigation-related climate policies were among the cooperation objectives included in the Partnership and Cooperation Agreements signed between the EU and former Soviet republics in the 1990s (Shyrokykh, 2021). In particular, water management in countries with access to the Danube and the Black Sea was a major field of cooperation under this scheme (e.g., Buzogány, 2013). Gradually, as the level of regional cooperation grew and as the EU's policies on this matter evolved, the role of environment and climate in EU-Ukraine relations also increased. The AA signed between the EU and Ukraine in 2014 became a landmark agreement that shaped Ukrainian policies in the domain of environmental and climate governance (Shyrokykh, 2021).

The AA, which contains norms that currently guide environmental and climate governance among other areas, is the most comprehensive agreement in comparison to similar agreements with other countries. Chapter 6 of the AA declares that “[t]he Parties shall develop and strengthen

their cooperation on environmental issues, thereby contributing to the long-term objective of sustainable development and green economy” (EU-Ukraine, 2014, Art. 360). It is expected that enhanced environmental protection will bring benefits to citizens and businesses both in Ukraine and the EU, including through improved public health, preserved natural resources, increased economic and environmental efficiency, etc. The AA further stipulates that “[g]radual approximation of Ukrainian legislation to EU law and policy on the environment shall proceed in accordance with Annex XXX to this Agreement” (EU-Ukraine, 2014, Art. 363). In the analysis section, we systematically review the progress of Ukraine in compliance with directives listed in Annex XXX of the AA.

The EU’s Green Deal stands as a major European environmental and climate policy framework, its overarching goal is to make Europe the first climate-neutral continent by 2050 and to strengthen the EU’s role as a world leader in circular economy and biodiversity (European Commission, 2019). This objective is pursued through initiatives focusing on clean air, water, and soil, promoting biodiversity, renovating buildings for energy efficiency, ensuring accessible and healthy food, expanding public transportation, fostering clean energy sources and technological advancements, promoting durable and repairable goods that are recyclable and reusable, and supporting competitive and sustainable industries. The EGD relies on existing EU legislation and goals that are being set up in new policies and strategies of the EU in different sectors (International Renaissance Foundation, 2020).

While being ambitiously pursued within the Union’s own borders, the EGD also has strong external ramifications. For example, the EU pledged its commitment to help partner countries to “upgrade and implement their NDCs ahead of international climate negotiations, [...] enhance renewable energy generation and energy efficiency, support the preservation of biodiversity, foster circular and low carbon economies, promote better management of natural resources and tackle pollution, waste and sanitation” (European Commission, 2020). In fact, 25% of the 2021–2027 EGD budget was earmarked to be spent for supporting climate objectives in the EU neighbourhood and other partner countries (Shyrokykh, 2021).

3 THEORISING COMPLIANCE TRACKS: INSTRUMENTAL AND ANTICIPATORY

We acknowledge the possibility of instrumental complacence driven by the cost–benefit calculations, as well as the possibility that compliance might take a forward-looking anticipatory form. We hypothesise that there are two explanations for the ongoing Europeanisation of environmental and climate policy in Ukraine. Firstly, environmental and climate commitments are a part of the AA. Ukraine must comply with the obligations it has taken to deepen economic relations. Additionally, Ukraine is a candidate country which implies the necessity of EU *acquis* transposition, implementation, and enforcement. Existing works have effectively demonstrated that the main logic behind the compliance with the EU *acquis* has been cost–benefit calculations in the context of the prospect of deepening bilateral economic and political ties (Schimmelfennig et al., 2003; Shyrokykh et al., 2025). The core argument of the instrumental approach posits that governments comply with EU conditionality subsequent to a calculated assessment of the costs and benefits linked to compliance. Compliance, in this context, stems from the existence of efficient measures that either impose significant costs for non-compliance or offer incentives to encourage compliance.

We suggest that compliance based on cost–benefit calculations should not be limited to instrumental compliance with conditionality, this alone might not suffice to explain Ukraine’s ongoing environmental and climate reforms. The instrumental model can effectively explain (non-) compliance with EU conditionality in the context of certainty when conditionality is clearly outlined. When a country has a specific conditionality and knows what the final benefit is after compliance, the country can make a decision based on rational calculations. In contrast, in the situation of war, there are many uncertainties. Compliance mechanisms in a situation of uncertainty may therefore differ.

As a result of Russia’s full-scale invasion, Ukraine has been suffering from massive destruction. Reconstruction needs are pressing and necessitate rebuilding planning in the context of still ongoing war. We posit that these conditions create a particular context for compliance calculations. Namely, we suggest that under the conditions of high uncertainty due to the war and the scale of future reconstruction needs, to be able to proceed with European integration and rebuilding, Ukraine must adopt a forward-looking approach to compliance, which we call *anticipatory compliance*.

Our approach is inspired by the anticipatory governance literature (e.g. Quay, 2010).

The literature posits that uncertainty, especially in the context of the extended planning horizon, affects governance decisions (Quay, 2010). Anticipatory governance recognises that some aspects of the future are unknown and that any prediction or forecast represents only one of many possible futures. The anticipatory model of governance covers a broad range of possible futures when there is high uncertainty (Lempert & Schlesinger, 2000; Lempert et al, 2003), keeping various scenarios open (Lempert et al., 2003; Menke, 1979). In response to the problem of the necessity of decision-making in times of an extended time horizon, the anticipatory governance approach proposes a model of decision-making based on foresight and flexibility. It builds on the recognition of the necessity of keeping a wide range of possible future scenarios open for consideration. Such an approach allows to anticipate governance strategies and effects thereof, and then monitor change and use these strategies to guide decision-making (Quay, 2010).

The anticipatory compliance approach is particularly potent in the context of the present study for two reasons. First, the issue area of environment and climate is marked by high uncertainty and the necessity for long-horizon planning. Second, the ongoing war implies unpredictable outcomes for the level of destruction, but also the timing of when post-war rebuilding can start. To be able to prepare for effective governance in the context of uncertainty, we posit that governance of compliance must be adaptive, flexible, and forward-looking.

4 EUROPEANISATION OF ENVIRONMENTAL AND CLIMATE LEGISLATION

To test the above hypothesis, we carry out a cross-case comparison in which we expect variance across two tracks of Ukraine's Europeanisation of environmental and climate legislation—compliance with the AA and integration of the EGD norms into national legislation. Cross-case comparisons help to establish which differences between these two tracks bring about differences in outcomes (Mahoney, 2007).

When it concerns compliance with the AA, we assess the compliance progress of Ukraine in the following environmental and climate domains: (i) environmental governance and environmental mainstreaming, (ii) air quality, (iii) waste and resource management, (iv) water quality and water

resource management, (v) nature protection, (vi) industrial pollution and industrial hazards, and (vii) climate change and the protection of ozone layer. In the analysis, we build on the EU's reports (2016–2023) which trace Ukrainian compliance with the provisions of the AA.¹

To analyse how Ukraine complies with the EGD's norms, we conduct an analysis of Ukraine's policies detecting references to the EGD and the necessity of alignment with it (2020–2023).² Since the EGD is a framework policy and does not have a fixed set of norms promoted in third countries, we identify explicit references to the EGD rather than trace progress in individual sectors.

4.1 *Alignment with the Environmental and Climate Provisions of the AA*

Ukraine has a patchy record in climate and environmental governance. For decades, these reforms were down-prioritised. Since signing the AA in 2014, Ukraine's compliance record has been mixed. Some reforms followed in line with the EU *acquis*, as stipulated in the agreement, meanwhile in the policy areas where compliance requires improved capacity, resources, and investments, progress has been less noticeable (for a systematic overview see Table 1). In its report on Ukraine's compliance with the provisions of the AA, the European Commission labelled the progress as minor (European Commission, 2022a). Building on the EU's evaluation of Ukraine's progress, as well as analysis of Ukrainian environmental and climate legislation, Table 1 reviews which provisions of the AA were complied with.

Ukraine has taken notable steps to align with the EU's *cross-cutting* rules on the environment *acquis* (European Commission, 2023a). The Commission highlighted the necessity to improve implementation, as issues like procedural inconsistencies and patchy enforcement have surfaced both domestically and in cross-border contexts (European Commission, 2023a). Furthermore, as the EU's regulations have

¹ Since 2016, Ukraine's implementation of the EU *acquis* has been presented in the EU's annual Association Implementation Reports. In February 2023, the European Commission issued the latest analytical report on Ukraine's application for membership to the European Union.

² The EGD was adopted in 2020.

Table 1 Review of Ukraine's compliance with the AA. *Source:* Authors' own analysis

<i>Policy area</i>	<i>EU directives</i>	<i>Approximation measures taken</i>	<i>Status</i>
Environmental governance and environmental mainstreaming	<ol style="list-style-type: none"> 1. 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (codification) 2. 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment 3. 2003/4/EC on public access to environmental information and repealing Directive 90/313/EEC 4. 2003/35/EC providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Directives 85/337/EEC and 96/61/EC 	<ol style="list-style-type: none"> 1. Law on environmental impact assessment (Verkhovna Rada of Ukraine, 2017) 2. Law on strategic environmental assessment and by-laws aimed at better implementation of the provisions of the law (Verkhovna Rada of Ukraine, 2022a) 3. Law on access to public information (Verkhovna Rada of Ukraine, 2011) 4. Law on strategic environmental assessment and by-laws aimed at better implementation of the provisions of the law (Verkhovna Rada of Ukraine, 2022a) 	Fulfilled all approximation goals (4/4)

(continued)

Table 1 (continued)

<i>Policy area</i>	<i>EU directives</i>	<i>Approximation measures taken</i>	<i>Status</i>
Air quality	<ol style="list-style-type: none"> 2008/50/EC on ambient air quality and cleaner air for Europe 2004/107/EC relating to arsenic, cadmium, mercury, nickel, and polycyclic aromatic hydrocarbons in ambient air 98/70/EC relating to the quality of petrol and diesel fuels 1999/32/EC on reduction of sulphur content of certain liquid fuels 94/63/EC on the control of volatile organic compound emissions resulting from the storage of petrol and its distribution from terminals to service stations 2004/42/EC on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain paints and varnishes and vehicle refinishing products 	<ol style="list-style-type: none"> Rules of state monitoring of air (Cabinet of Ministers of Ukraine, 2019) Rules of monitoring of concentration of arsenic, cadmium, mercury, nickel, and polycyclic aromatic hydrocarbons in the air and 4. Technical regulation concerning the requirements for petrol oils, diesel fuels, ship, and boiler fuels by the decision of the government of Ukraine N/A Order of the ministry of economic development of Ukraine (Ministry of Economic Development of Ukraine, 2022) 	Partially fulfilled approximation goals (5/6)

<i>Policy area</i>	<i>EU directives</i>	<i>Approximation measures taken</i>	<i>Status</i>
Waste and resource management	<ol style="list-style-type: none"> 1. 2008/98/EC on waste 2. 1999/31/EC on the landfill of waste 3. 2006/21/EC on the management of waste from extractive industries 	<ol style="list-style-type: none"> 1. Law on waste management (Verkhovna Rada of Ukraine, 2022b) 2. Not fully transposed (article 40 of the law on waste management partially covers landfill of waste) 3. Not fully transposed (the law on waste management partially covers the management of waste) 	Partially fulfilled approximation goals, approximation with the law is on the early stage (1/3)

(continued)

Table 1 (continued)

<i>Policy area</i>	<i>EU directives</i>	<i>Approximation measures taken</i>	<i>Status</i>
Water quality and water resource management	<ol style="list-style-type: none"> 1. 2000/60/EC establishing a framework for Community action in the field of water policy 2. 2007/60/EC on the assessment and management of flood risks 3. 2008/56/EC establishing a framework for community action in the field of marine environmental policy 4. 91/271/EEC concerning urban wastewater treatment 5. 98/83/EC on the quality of water intended for human consumption 6. 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources 	<ol style="list-style-type: none"> 1. Water strategy of Ukraine (Cabinet of Ministers of Ukraine, 2022a) and amendments to the Water Code of Ukraine (Verkhovna Rada of Ukraine, 1995); guidance on the development of river basin management plans (Cabinet of Ministers of Ukraine, 2017) 2. Amendment of the Water Code of Ukraine (Art. 107–1) (Verkhovna Rada of Ukraine, 1995); the preliminary flood assessment methodology (Ministry of Internal Affairs of Ukraine, 2018a); methodology of flood hazards maps and flood risks maps (Ministry of Internal Affairs of Ukraine, 2018b); rules of (and plans of) development of flood risks management plan (Cabinet of Ministers of Ukraine, 2018, 2022b) 	Partially fulfilled approximation goals (5/6)

<i>Policy area</i>	<i>EU directives</i>	<i>Approximation measures taken</i>	<i>Status</i>
		<ol style="list-style-type: none"> <li data-bbox="202 456 288 759">3. Marine environmental protection strategy (Cabinet of Ministers of Ukraine, 2021a, b) <li data-bbox="295 456 359 759">4. Law on sewage and wastewater treatment (Verkhovna Rada of Ukraine, 2023b) <li data-bbox="366 456 605 759">5. Law on drinking water, drinking water supply, and sewage (Verkhovna Rada of Ukraine, 2002, with amendments of October 2023); amendments to the state sanitary norms and rules on hygienic requirements for drinking water intended for human consumption (Ministry of Health of Ukraine, 2022) <li data-bbox="612 456 927 759">6. Order of the Ministry of Environmental Protection on approval of the methodology of identification of nitrate-vulnerable zones [regulation of the development of action plans for nitrate-vulnerable zones and establishment of programmes for monitoring of such zones is missing] (Ministry of Environmental Protection & Natural Resources of Ukraine, 2021a) 	

(continued)

Table 1 (continued)

<i>Policy area</i>	<i>EU directives</i>	<i>Approximation measures taken</i>	<i>Status</i>
Nature protection	<ol style="list-style-type: none"> 2009/147/EC on the conservation of wild birds 92/43/EC on the conservation of natural habitats and of wild fauna and flora 	<ol style="list-style-type: none"> N/A N/A 	Not fulfilled, unsuccessful attempts (0/2)
Industrial pollution and industrial hazards	<ol style="list-style-type: none"> 2010/75/EU on industrial emission (integrated pollution prevention and control) 96/82/EC on the control of major accident hazards involving dangerous substances 	<ol style="list-style-type: none"> The law is being developed (awaits second hearing) (Verkhovna Rada of Ukraine, 2021a) Amendments to the law on objects of increased danger (Verkhovna Rada of Ukraine, 2001) 	Partially fulfilled approximation goals (1/2)

<i>Policy area</i>	<i>EU directives</i>	<i>Approximation measures taken</i>	<i>Status</i>
Climate change and the protection of the ozone layer	<ol style="list-style-type: none"> 1. 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community 2. Regulation (EC) No 842/2006 on certain fluorinated greenhouse gases 3. Regulation (EC) No 2037/2000 on substances that deplete the ozone layer 	<ol style="list-style-type: none"> 1. Not transposed, some aspects are covered by the law on monitoring, accounting, and verification of greenhouse gas emissions and order of the procedure of monitoring and accounting of greenhouse gas emissions (Cabinet of Ministers of Ukraine, 2020c; Verkhovna Rada of Ukraine, 2020); the order on operation of register on monitoring, accounting and verification of emissions of greenhouse gases (Ministry of Environmental Protection & Natural Resources of Ukraine, 2021b); the decision on the procedure of verification of the report of the operator on greenhouse gas emissions (Cabinet of Ministers of Ukraine, 2020d); adoption of the list of activities with emissions subject to monitoring, accounting and verification (Cabinet of Ministers of Ukraine, 2020e) 	Partially fulfilled approximation goals (2/3)

(continued)

Table 1 (continued)

<i>Policy area</i>	<i>EU directives</i>	<i>Approximation measures taken</i>	<i>Status</i>
		<ol style="list-style-type: none"> 2. Law on regulation of commercial activities with ozone substances and fluorinated greenhouse gases (Verkhovna Rada of Ukraine, 2019a) 3. Law on regulation of commercial activities with ozone substances and fluorinated greenhouse gases (Verkhovna Rada of Ukraine, 2019a) 	

To save space, we include full information on relevant legal acts into this table but do not quote them in the reference list. All quoted legal acts can be accessed via EUR-LEX database

expanded and intensified under the EGD, disparities in legislative alignment widened (European Commission, 2023b).

At the same time, a few noticeable steps towards the Europeanisation of Ukraine's environmental and climate policies can be noted. For instance, Ukraine undertook an attempt to restart the system of state environmental monitoring. The Law on Amendments to Certain Laws Regarding the State Environmental Monitoring System, Environmental Information, and Informational Support for Environmental Management was adopted in 2023 (Verkhovna Rada of Ukraine, 2023a). The law defines the main approaches to the creation and operation of the state environmental monitoring system and its subsystems, a state environmental analytical system for ensuring sound governmental decisions and access to environmental information.

Additionally, amendments to the Law on Strategic Environmental Assessment (SEA) were made in 2022 (Verkhovna Rada of Ukraine, 2022a). Thus, a new Register of SEA was introduced, it aims to facilitate access to information on SEA providers and improve public participation. The law introduced changes to the providers of public consultations and consultations with state bodies. Also, the amendment introduced new provisions on the responsibility for violation of the SEA procedures.

To comply with its commitments on *waste management*, Ukraine has adopted the 2017 National Waste Management Strategy for Ukraine until 2030. This framework legislation transposed certain provisions of the EU's Waste Framework Directive. Additionally, amid the war, a new Law on Waste Management was adopted in 2022 (Verkhovna Rada of Ukraine, 2022b). It approximates Ukraine's legislation with the corresponding EU Directives and lays out the legal norms for the implementation of a circular economy in Ukraine. To fully comply with the corresponding directives, further efforts are needed in the areas of waste prevention, waste recovery, and recycling systems, as well as in establishing a functional waste hierarchy and managing specific waste streams, including hazardous waste. Furthermore, the issue of illegal landfills needs to be tackled at a systemic level.

On *air quality*, Ukraine's progress is noticeable. It complied with most of the EU's directives (European Commission, 2023a). Ukraine introduced air quality standards in line with those of the EU, except for fine particulate matter. A national air quality monitoring programme is in place. Partial emission inventories have been established. At the same

time, significant gaps remain to be addressed for the national emission reduction commitments.

Likewise, there is good progress in *water management*. The AA provides a framework for water policy reforms in Ukraine (OECD, 2021). Ukraine updated its Water Code and river basin districts have been established (Verkhovna Rada of Ukraine, 1995 (amended as of 2024); Cabinet of Ministers of Ukraine, 2017). A state programme for the construction and reconstruction of drinking water infrastructure (2022–2026) has been developed (Verkhovna Rada of Ukraine, 2022c). Alignment with the Urban Wastewater Treatment and Bathing Water Directives is still needed, as well as with the Drinking Water Directive (Council of the EU, 1991; European Parliament & Council, 2006, 2020).

In terms of enforcement, clean water services are in place but responsibilities as regards drinking water and wastewater need to be clarified. General principles of marine water protection are reflected in the legislation. Monitoring is planned for marine waters, including for protected areas. The marine environmental strategy was approved in 2021, aiming to achieve and maintain a good environmental status under the Marine Strategy Framework Directive (European Parliament & Council, 2008). Steps have been taken to align with the Nitrates Directive, but nitrate-vulnerable zones still need to be designated. Lastly, Ukraine approved the Water Strategy of Ukraine until 2050 (Cabinet of Ministers of Ukraine, 2022a). The Strategy listed the indicators and criteria for achievement of the aforementioned goals. It also provided the operational plan for 2022–2024 of the Water Strategy.

There is a certain level of progress in the domain of *industrial pollution and risk management*. Ukraine adopted concepts and action plans aimed at aligning with the EU *acquis* in this area (Table 1). Yet, significant legislative work and investments are needed for industrial and livestock-rearing activities that fall under the EU's industrial emissions legislation. The current national restrictions on pollutant emissions and discharge fall short of aligning with the emission levels linked to the best available techniques outlined in the Industrial Emissions Directive, particularly concerning around 220 sizable combustion plants (European Commission, 2023a, p. 70). In 2022, the Parliament of Ukraine adopted the Law on Pollutants Release and Transfer Register, which regulates the functioning of the national register of the same name (Verkhovna Rada of

Ukraine, 2022d). Additionally, Ukraine adopted the Rules of Introduction of Obligatory Automatic Systems of Control of Pollutant Emissions in 2023 (Cabinet of Ministers of Ukraine, 2023a).

In contrast, there is only partial compliance in the area of *nature protection*, in particular with the EU nature directives. Although Ukraine invested efforts to identify and designate its Emerald Network (European Commission, 2023a, p. 69), further actions are needed to meet the objectives of the Natura 2000 network. Likewise, significant gaps in the alignment with the Habitats Directive have been identified (European Commission, 2023a, p. 69). A related new law was adopted amid the war in 2022, the Law on Amendments to the Legislative Acts Concerning Conservation of Forests (Verkhovna Rada of Ukraine, 2022e). It amended the Forest Code of Ukraine and the Land Code of Ukraine providing new regulation of conservation of lands.

Likewise, alignment with the regulations on *chemicals* is insufficient. At present, there is an overlap between regulations governing hazardous waste management and those concerning chemicals (European Commission, 2023b). Addressing the chemicals, legislation will require substantial efforts in terms of implementation and enforcement. The alignment with climate-related regulations is generally rated as low to moderate, with implementation being in its initial phases.

In 2022, Ukraine adopted the Law on Chemical Safety and Management of Chemical Goods (Verkhovna Rada of Ukraine, 2022f). The Law defines the measures for the management of chemical goods, aimed at the prevention of the hazardous impact of such goods on the environment and human health, lists the requirements for business entities working in the sphere of chemical management, etc.

When it concerns *climate change*, Ukraine is partially aligned with the EU Regulations on Ozone Depleting Substances and Fluorinated Greenhouse Gases (European Parliament & Council, 2024). At the same time, it lacks provisions for a reduction in hydrochlorofluorocarbons consumption. A concept for the implementation of state policy in the field of climate change accompanied by an action plan was adopted in 2016. In 2018, it adopted a low-emission development strategy.

The legislation on installation-level monitoring, reporting, and verification of emissions adopted in 2019 was an important prerequisite for a future carbon pricing instrument, but due to the ongoing war, reporting and subsequent verification are not performed uniformly (European Commission, 2023b). Furthermore, Ukraine has not yet fully aligned

with the Directive establishing a scheme for greenhouse gas emission allowance trading (*ibid*). Additionally, Ukraine lacks targeted legislation addressing fuel quality improvement and the reduction of greenhouse gas emissions from petrol, diesel, and gas oil fuel (*ibid*). While engaged in the European Civil Aviation Conference and voluntarily involved in the global Carbon Offsetting and Reduction Scheme for International Aviation, it has not formulated specific national laws aligning with the Directive on Carbon Capture and Storage (*ibid*). Likewise, although Ukraine adopted a national adaptation strategy in 2021, there is no dedicated legislation on climate change adaptation. Overall, climate policy integration is at a very early stage.

In all, the progress of Ukraine in compliance with environment- and climate-related provisions of the AA is rather slow and partial. Key environmental and climate laws are missing in a few fields, for example, industrial emissions, greenhouse gas emission trading, and waste management are not implemented. Neither are there policies on planning and assessment of habitat and nature conservation.

There are several challenges in the implementation of the AA. Often, reforms have been undermined by the vested interests of powerful interest groups, low state capacity (Tiainen, 2017), the security situation, and the shifted focus towards immediate defence rather than long-horizon planning (Shyrokykh & Zasiadko, 2023), and the lack of leverage on the part of the EU. It is particularly interesting that in the context of only partial compliance with the AA, Ukraine initiated gradual integration with standards as set up in the EGD.

4.2 *Alignment with the EGD*

Despite the obvious gaps in the implementation of the AA, Ukraine has evolved into partially integrating the provisions of the EGD into its policies. Thus, in 2021, the Parliament of Ukraine issued a statement on priority issues in the process of integration with the EU (Verkhovna Rada of Ukraine, 2021b). In this document, Ukraine asked the European Parliament and the parliaments of the member states of the EU to provide support to Ukraine in the implementation of the principles of the EGD. Similarly, Ukraine's Foreign Policy Strategy which was adopted by the Decree of the President of Ukraine in 2021 mentions the implementation of the EGD as a strategic objective of Ukraine (President of Ukraine, 2021). Likewise, in 2023, the Parliament of Ukraine adopted

the Action Plan for the Implementation of the Strategy of Foreign Policy of Ukraine, which includes concrete steps to implement the EGD (Cabinet of Ministers of Ukraine, 2023b). Thus, Ukraine is gradually bringing its legal framework in line with climate norms as outlined in the EGD (EU4Ukraine, n.d.).

In addition, both Ukraine's government and the European Commission aspire to mainstream the EU's green agenda in the post-war recovery of Ukraine (Andrusevych, 2022; European Commission, 2022b). For instance, in 2022, the President of Ukraine, Volodymyr Zelenskyy, created the National Council for the Restoration of Ukraine from the Consequences of War (President of Ukraine, 2022). This Council is a consultative body attached to the Office of the President of Ukraine and consists of the key officials from the Parliament and Ministers. Their task is to create an action plan for post-war recovery and development, a list of priority reforms and strategic initiatives, and draft laws and by-laws necessary for the effective work on recovery and rebuilding of Ukraine during the war and in the post-war period.

The results of the Council's work were aggregated in draft Action Plans on different topics, including a Recovery Plan on the Environment (National Council for the Restoration of Ukraine from the Consequences of War, 2022). The Recovery Plan on the Environment is called to ensure the implementation of environmental policy in line with the European integration aspirations of Ukraine and the EGD's provisions (ibid). It also pledged to integrate environmental concerns into all recovery projects and reforms. Interestingly, the AA is framed as a cooperation framework that stimulates Ukraine to "Europeanise" its environmental and climate policies (National Council for the Restoration of Ukraine from the Consequences of War, 2022, p. 8).³

As declared by the European Commission and Ukraine, rebuilding of Ukraine will build on the principles of the EGD (European Commission, 2023c; European Commission, 2022b; National Council for the Restoration of Ukraine from the Consequences of War, 2022). There is a clear awareness that, apart from the rule of law (Shyrokykh et al., 2025), recovery will require European investments and that alignment with the objectives of the EGD will be necessary to attract the latter

³ The Recovery Plan was presented at the Ukraine Recovery Conference in Lugano in July 2022. The Lugano Declaration is the final outcome document. The Declaration was presented at the closing plenary of the conference in Lugano.

(National Council for the Restoration of Ukraine from the Consequences of War, 2022). Furthermore, the need for green transition is framed as necessary to fully integrate into the European market and ensure the strategic autonomy of Ukraine (Ukraine Recovery Conference, 2022). The need to synchronise with the EGD is mentioned as being a part of Ukraine's future environmental and climate governance architecture (Ukraine Recovery Plan, n.d.).

At the same time, civil society organisations remain sceptical of Ukraine's ability to align with the EGD due to the lack of comprehensive legislation (Belousova, 2022). Key environmental and climate policy documents of Ukraine do not reflect the political declarations concerning the alignment with the EGD's principles. For example, the environmental policy of Ukraine as outlined in the 2021 Strategy of the State Environmental Policy of Ukraine until 2030 has not changed since the beginning of the full-scale war (Verkhovna Rada of Ukraine, 2019b). Thus, the current environmental policy of Ukraine does not cover the principles of green rebuilding. Neither does the Strategy mention the EGD's overarching policy for nature protection and economic development; only one reference to the EGD is made in the context of protected areas.

Likewise, the National Economic Strategy of Ukraine until 2030, which defines the strategic course of the economic policy (Cabinet of Ministries of Ukraine, 2021a, b), only shortly mentions decarbonization of the economy and synchronisation with the EGD. It indicates the need to increase energy efficiency, develop renewables, and a circular economy. Such a short reference to the EGD might demonstrate limited ambition to implement the EGD's goals. Furthermore, the institutional arrangements for the preparation and implementation of the Recovery Plan are still missing.

Interestingly, Ukraine's policy alignment with the provisions of the EGD started in 2021 as indicated above. With the beginning of the full-scale war, the process substantially intensified, especially since the scale of destruction and the need for rebuilding were enormous. This exemplifies that although it may be triggered by a critical juncture, like a war, anticipatory Europeanisation can exist as a legitimate parallel track of Europeanisation in neighbouring countries.

To summarise, our analysis of Ukraine's policies and how the necessity of alignment with the EGD is discussed suggests that the Europeanisation of Ukraine's environmental and climate policies can be explained by the combination of instrumental and forward-looking anticipatory

compliance. We show that the ongoing war adds to the complexity and uncertainty of environmental and climate governance in Ukraine. In response to that, Ukraine's policy demonstrates openness to multiple future scenarios which jointly maximise chances for Europeanisation of the policy domain. In sum, we detect that two parallel processes of Europeanisation explain environmental and climate reforms in Ukraine: conditionality compliance and anticipatory compliance. These two parallel "tracks" of Ukraine's Europeanisation of environmental and climate policy reinforce and complement one another.

5 CONCLUSIONS

The war in Ukraine has resulted in a scale of human and infrastructural losses unprecedented since the Second World War, as well as the need for rebuilding the country. Despite the war, Ukraine demonstrates a slow, but steady movement towards the Europeanisation of its environmental and climate policies. These efforts have ramped up since Russia's full-scale aggression against Ukraine. The analysis of Ukraine's environmental and climate policies demonstrates that the process of alignment with the provisions of the AA and the EGD is driven by the compliance with conditionality attached to the AA, as well as anticipatory compliance with norms of the EGD while planning for the future rebuilding of Ukraine and integration with the EU.

The first track follows the logic of instrumental compliance with conditionality, as described in much of the Europeanisation literature. Aspiring to further integrate into the EU, Ukraine complies with the provisions of the AA. Since the signing of the AA, Ukrainian legislation has evolved, although much work remains to be done to fully fulfil its obligations. The second "track" which we call anticipatory compliance reveals itself in Ukraine's acknowledgment of the need for future alignment with the EGD and adoption of the corresponding norms. The EGD policy framework heavily influences the development of EU legislation. Finding itself in a very hard situation amid the war and realising that the EU is and will be its main economic partner in the future, Ukraine realises the need for forward-looking alignment with EGD norms, as well as the reality that the rebuilding of Ukraine will depend on it.

REFERENCES

EU PRIMARY SOURCES

- Council of the EU. (1991). Directive 91/271/EEC concerning urban water treatment. *OJ L 135*, 30.5.1991, 40–52. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31991L0271>
- EU4Ukraine. (n.d.). Europe says “Deal!” to the Green Deal. *EU4Ukraine*. <https://eu4ukraine.eu/en/greendeal-en>
- European Commission. (2018). *Report from the Commission to the European Parliament and the Council on the Implementation of the EU Strategy on Adaptation to Climate Change*. COM/2018/738 Final. Brussels. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52018DC0738>
- European Commission. (2019). *The European Green Deal*. Brussels, 11.12.2019 COM(2019) 640 final. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2019%3A640%3AFIN>
- European Commission. (2020). *The external dimension of the Green Deal*. Brussels. <https://ec.europa.eu/newsroom/intpa/items/673950>
- European Commission. (2022a). *Association Implementation Report on Ukraine*. Brussels, 22.7.2022 SWD(2022) 202 final. <https://www.ecas.europa.eu/sites/default/files/documents/Association%20Implementation%20Report%20on%20Ukraine%20-%20Joint%20staff%20working%20document.pdf>
- European Commission. (2022b). *Ukraine Relief and Reconstruction*. Brussels, 18.5.2022 COM(2022) 233 final. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022DC0233>
- European Commission. (2023a). *Strategy for the EU integration of the Ukrainian and Moldovan rail systems*. Brussels, 11.07.2023. https://transport.ec.europa.eu/system/files/2023-07/Integration_of_the_UAMD_railway_system_into_the_EU_transport_system.pdf
- European Commission. (2023b). *Ukraine’s application for membership of the European Union*. Brussels, SWD(2023) 30 final. https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-02/SWD_2023_30_Ukraine.pdf
- European Commission. (2023c). *EU and Ukraine outline plans for sustainable reconstruction in a high-level conference*. Brussels. https://neighbourhood-enlargement.ec.europa.eu/news/eu-and-ukraine-outline-plans-sustainable-reconstruction-high-level-conference-2023-11-27_en
- European Council. (2020). *Neighbourhood, development and international cooperation instrument: Coreper endorses provisional agreement with the European Parliament*. Press Release. <https://www.consilium.europa.eu/en/press/press-releases/2020/12/18/neighbourhood-development-and-international-cooperation-instrument-coreper-endorses-provisional-agreement-with-the-european-parliament/>

- European Parliament and Council. (2006). Directive concerning the management of bathing water quality and repealing Directive 76/160/EEC. *OJ L 064 4.3.2006*, p. 37. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02006L0007-20140101>
- European Parliament and Council. (2008). Directive establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive). *OJ L 164, 25.6.2008*, p. 19–40. <https://eur-lex.europa.eu/eli/dir/2008/56/oj>
- European Parliament and Council. (2020). Directive on the quality of water intended for human consumption. *OJ L 435, 23.12.2020*, p. 1–62. <https://eur-lex.europa.eu/eli/dir/2020/2184/oj>
- European Parliament and Council. (2024). *Regulation 2024/590 on substances that deplete the ozone layer, and repealing Regulation (EC) No 1005/2009*. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32024R0590#:~:text=1.,Annex%20I%20shall%20be%20prohibited>.
- EU-Ukraine. (2014). Association agreement between the European Union and its member states, of the one part, and Ukraine, of the other part. *Official Journal of the European Union*, L 161/3, 29.5.2014, 3–2137.

UKRAINIAN LEGISLATION AND BY-LAWS

- Cabinet of Ministers of Ukraine. (2017). *Resolution “On approving the Order on the procedure of a river basin management plan”*. <https://zakon.rada.gov.ua/laws/show/336-2017-%D0%BF#Text>
- Cabinet of Ministers of Ukraine. (2018). *Resolution “On approving the plan of managing flood risks”*. No 247. <https://zakon.rada.gov.ua/laws/show/247-2018-%D0%BF#Text>
- Cabinet of Ministers of Ukraine. (2019). *Resolution “Some aspects of exercising state monitoring in the domain of atmospheric air management”*. No 827. <https://zakon.rada.gov.ua/laws/show/827-2019-%D0%BF#Text>.
- Cabinet of Ministers of Ukraine. (2020a). *Resolution “On the creation of an inter-departmental working group on coordinating issues related to the overcoming of the consequences of climate change within the framework of the European Commission’s ‘European Green Deal’ initiative”*. No. 33. <https://zakon.rada.gov.ua/laws/show/33-2020-%D0%BF#Text>
- Cabinet of Ministers of Ukraine. (2020b). *Order “On approving action plan as to the implementation of the Strategy of Ukraine’s foreign policy activity”*. No 327-p. <https://zakon.rada.gov.ua/laws/show/327-2023-%D1%80#Text>
- Cabinet of Ministers of Ukraine. (2020c). *Resolution “On establishing the order of conducting monitoring and reporting on greenhouse gas emissions”*. No. 960. <https://zakon.rada.gov.ua/laws/show/960-2020-%D0%BF#Text>

- Cabinet of Ministers of Ukraine. (2020d). *Resolution "On approving the Procedure for the verification of an operator's report on greenhouse gas emissions"*. No 959. <https://zakon.rada.gov.ua/laws/show/959-2020-%D0%BF#Text>
- Cabinet of Ministers of Ukraine. (2020e). *Resolution "On approving the list of types of activities, whose related greenhouse gas emissions are subject to monitoring, reporting and verification"*. No 880. <https://zakon.rada.gov.ua/laws/show/880-2020-%D0%BF#Text>
- Cabinet of Ministers of Ukraine. (2021a). *Resolution "On the approval of the National Economic Strategy over the period until 2030"*. No. 179. <https://www.kmu.gov.ua/npas/pro-zatverdzhennya-nacionalnoyi-eko-a179>
- Cabinet of Ministers of Ukraine. (2021b). *Resolution "On approving the marine environmental protection strategy of Ukraine"* No. 1240-p. <https://zakon.rada.gov.ua/laws/show/1240-2021-%D1%80#Text>
- Cabinet of Ministers of Ukraine. (2022a). *Order "On the approval of the Water Strategy of Ukraine for the period until 2050"*. No 1134-p. <https://zakon.rada.gov.ua/laws/show/1134-2022-%D1%80#Text>
- Cabinet of Ministers of Ukraine. (2022b). *Resolution "On the approval of management plans for flood risks in the areas of river basins"*. No.895-b. <https://zakon.rada.gov.ua/laws/show/895-2022-%D1%80#Text>
- Cabinet of Ministers of Ukraine. (2023a). *Resolution "On the rules of introduction of obligatory automatic systems of control of pollutant emissions"*. No 272. <https://zakon.rada.gov.ua/laws/show/272-2023-%D0%BF#Text>
- Cabinet of Ministers of Ukraine. (2023b). *Ordeal "On the approval of the action plan as to the implementation of Ukraine's foreign policy strategy"*. No 327-p. <https://zakon.rada.gov.ua/laws/show/327-2023-%D1%80#Text>
- Ministry of Environmental Protection and Natural Resources of Ukraine. (2021a). *Order "On the determination of zones, vulnerable to (the accumulation) of nitrates"*. No. 244. <https://zakon.rada.gov.ua/laws/show/z0776-21#Text>
- Ministry of Environmental Protection and Natural Resources of Ukraine. (2021b). *Order "On approving the order on the operation of the Unified register on the monitoring, reporting and verification of greenhouse emissions"*. No 370. <https://zakon.rada.gov.ua/laws/show/z1060-21#Text>
- Ministry of Economic Development of Ukraine (2022). *Resolution "On the approval of the Technical Regulations concerning the limitation of emissions of volatile organic compounds resulting from the use of organic solvents in paints and varnishes for building and repairing wheeled vehicles"*. <https://zakon.rada.gov.ua/laws/show/z1228-18#n15>
- Ministry of Health of Ukraine. (2022). *Order "On approving the Amendments to State sanitary norms and rules "Hygienic requirements to drinking water"*. No 341. <https://zakon.rada.gov.ua/laws/show/z0304-22#Text>

- Ministry of Internal Affairs of Ukraine. (2018a). *“On approving the methodology of floods’ risk assessment”*. No 30. <https://zakon.rada.gov.ua/laws/show/z0153-18#Text>
- Ministry of Internal Affairs of Ukraine. (2018b). *“On approving the methodology of developing the maps of threats and risks of floods”*. No 350/31802. <https://zakon.rada.gov.ua/laws/show/z0350-18#Text>
- National Council for the Restoration of Ukraine from the Consequences of War. (2022). *Recovery plan of Ukraine (draft): Materials of the Working Group “Environmental Safety”*. <https://www.kmu.gov.ua/storage/app/sites/1/recoveryrada/eng/ecosafety-eng.pdf>
- President of Ukraine.(2021). *Order “On the decision of the National Security Council of Ukraine of 30 July 2021 ‘On Ukraine’s foreign policy strategy’”*. No 448. <https://zakon.rada.gov.ua/laws/show/448/2021#Text>
- President of Ukraine. (2022). *Order “Issues related to the National Council of the Restoration of Ukraine from the Consequences of the War”*. No. 266/2022. <https://zakon.rada.gov.ua/laws/show/266/2022#Text>.
- Ukraine Recovery Plan. (n.d.). *Енергетична незалежність та Зелений Курс. [Energy independence and the Green Deal.]* <https://recovery.gov.ua/en>
- Verkhovna Rada of Ukraine. (1995, last amended 19 April 2024). *Water Code of Ukraine*. No. 213/95-VR. <https://zakon.rada.gov.ua/laws/show/213/95-%D0%B2%D1%80#n1012>
- Verkhovna Rada of Ukraine. (2001, with amendments of 01 April 2024). *Law of Ukraine “On particularly dangerous objects”*. No. 2245-III. <https://zakon.rada.gov.ua/rada/show/2245-14#Text>
- Verkhovna Rada of Ukraine. (2002, with amendments of 01 October 2023). *Law of Ukraine “On drinking water and drinking water sewage”*. No 2918-III. <https://zakon.rada.gov.ua/laws/show/2918-14#Text>
- Verkhovna Rada of Ukraine. (2011). *Law of Ukraine “On access to public information”*. No. 2939-VI. <https://zakon.rada.gov.ua/laws/show/2939-17#Text>
- Verkhovna Rada of Ukraine. (2017). *Law of Ukraine “On environmental impact assessment”*. No. 2059-VIII. <https://zakon.rada.gov.ua/laws/show/2059-19#Text>
- Verkhovna Rada of Ukraine. (2019a). *Law of Ukraine “On regulation of economic activity with ozone-depleting substances and fluorinated greenhouse gases”*. No 376-IX. <https://zakon.rada.gov.ua/laws/show/376-20#Text>
- Verkhovna Rada of Ukraine. (2019b). *Law of Ukraine “On the foundations (strategy) of state environmental policy of Ukraine for the period until 2030”*. <https://zakon.rada.gov.ua/laws/show/2697-19#Text>
- Verkhovna Rada of Ukraine. (2020). *Law of Ukraine “On the foundations of monitoring, reporting and verification of greenhouse gases”*. No. 377-IX. <https://zakon.rada.gov.ua/laws/show/377-20#Text>

- Verkhovna Rada of Ukraine. (2021a). *Draft law of Ukraine “On state ecological control”*. <https://www.kmu.gov.ua/bills/proekt-zakonu-pro-derzhavniy-ekologichniy-kontrol-2>
- Verkhovna Rada of Ukraine. (2021b). *Resolution “On the statement of the Verkhovna Rada of Ukraine as to the priority issues related to Ukraine’s European integration”*. No 1806-IX. <https://zakon.rada.gov.ua/laws/show/1806-20#n11>
- Verkhovna Rada of Ukraine. (2022a). *Law of Ukraine “On amending some legislative acts of Ukraine as to the conduct of strategic environmental assessment”*. No. 2717-IX. <https://zakon.rada.gov.ua/laws/show/2717-20#n7>
- Verkhovna Rada of Ukraine. (2022b). *Law of Ukraine “On waste management”*. No 2320-IX. <https://zakon.rada.gov.ua/laws/show/2320-20#Text>
- Verkhovna Rada of Ukraine. (2022c). *Law of Ukraine “On the national targeted program “Drinking water of Ukraine” for 2022–2026*. <https://www.rada.gov.ua/news/Novyny/219438.html>
- Verkhovna Rada of Ukraine. (2022d). *Law of Ukraine “On pollutants release and transfer register”*. No. 2614-IX. <https://zakon.rada.gov.ua/laws/show/2614-20#Text>
- Verkhovna Rada of Ukraine. (2022e). *Law of Ukraine “On amendments to the legislative acts concerning the conservation of forests”*. 2321-IX. <https://zakon.rada.gov.ua/laws/show/2321-20#Text>.
- Verkhovna Rada of Ukraine. (2022f). *Law of Ukraine “On chemical safety and management of chemical goods”*. No 2804-IX. <https://zakon.rada.gov.ua/laws/show/2804-20#Text>
- Verkhovna Rada of Ukraine. (2023a). *Law of Ukraine “On introducing amendments to some legislative acts of Ukraine as to the state system of environmental monitoring, information as to the state of environment (ecological information) and information support of management in the environmental domain”*. No. 63. <https://zakon.rada.gov.ua/laws/show/2973-IX#Text>
- Verkhovna Rada of Ukraine. (2023b). *Law of Ukraine “On sewage and wastewater treatment”*. No 2887-IX. <https://zakon.rada.gov.ua/laws/show/2887-20#Text>

SECONDARY SOURCES

- Andrusevych, N. (2022). Зелене відновлення: на яких принципах буде базуватися відбудова України? [Green recovery: What principles will Ukraine’s reconstruction be based on?]. *Ukrayinska Pravda.*, 14.09.2022. <https://www.eurointegration.com.ua/articles/2022/09/14/7146700/>

- Belousova, K. (2022). “Луганський сором”: план відновлення природи України розкритикували екоактивісти. [“Luhansk shame”: Ukrainian nature restoration plan criticized by environmental activists]. Ecopolitic. <https://ecopolitic.com.ua/ua/news/luganskij-sorom-ekoaktivisti-rozkritikuvali-plan-vidnovlen-nya-prirodi-ukraini/>
- Buzogány, A. (2009). Romania: Environmental governance—Form without substance. In T. A. Börzel (Ed.), *Coping with accession to the European Union: New modes of environmental governance* (pp. 169–191). Palgrave Macmillan.
- Buzogány, A. (2013). Selective adoption of EU environmental norms in Ukraine: Convergence á la carte. *Europe-Asia Studies*, 65(4), 609–630. <https://doi.org/10.1080/09668136.2013.766039>
- Di Ciommo, M., Thijssen, S., & Monràs, M. S. (2018). The ice is broken, what's next? How the EU and middle-income countries work together on climate change. *ECDPM Making Policies Work: Discussion Paper* (No. 231). <https://ecdpm.org/work/the-ice-is-broken-whats-next-how-the-eu-and-middle-income-countries-work-together-on-climate-change>
- Freyburg, T., Lavenex, S., Schimmelfennig, F., Skripka, T., & Wetzels, A. (2015). *Democracy promotion by functional cooperation. The European Union and its Neighbourhood*. Palgrave.
- International Renaissance Foundation. (2020). *European Green Deal: Opportunities and threats to Ukraine*. <https://www.rac.org.ua/uploads/content/571/files/webeuropean-green-deal2020en.pdf>
- Johansmeyer, T. (2022). Damage to Ukraine's renewable energy sector could surpass \$1 billion. *Bulletin of the Atomic Scientists*, 20.
- Lavenex, S. (2015). The external face of differentiated integration: Third country participation in EU sectoral bodies. *Journal of European Public Policy*, 22(6), 836–853. <https://doi.org/10.1080/13501763.2015.1020836>
- Lavenex, S., & Kunz, R. (2008). The migration–development nexus in EU external relations. *Journal of European Integration*, 30(3), 439–457. <https://doi.org/10.1080/07036330802142152>
- Lempert, R. J., Popper, S. W., & Bankes, S. C. (2003). *Shaping the next one hundred years: New methods for quantitative, long-term policy analysis*. RAND Corp.
- Lempert, R. J., & Schlesinger, M. E. (2000). Robust strategies for abating climate change. *Journal of Climatic Change*, 45(3–4), 387–401. <https://doi.org/10.1023/A:1005698407365>
- Mahoney, J. (2007). Qualitative methodology and comparative politics. *Comparative Political Studies*, 40(2), 122–144. <https://doi.org/10.1177/0010414006296345>

- Menke, M. (1979). Strategic planning in an age of uncertainty. *Long Range Planning*, 12(4), 27–34. <https://doi.org/10.1016/j.mnl.2019.11.009>
- OECD. (2021). Developing a water policy outlook for Georgia, the Republic of Moldova and Ukraine. *OECD Studies on Water*. https://www.oecd-ilibrary.org/environment/developing-a-water-policy-outlook-for-georgia-the-republic-of-moldova-and-ukraine_512a52aa-en
- Quay, R. (2010). Anticipatory governance: A tool for climate change adaptation. *Journal of the American Planning Association*, 76(4), 496–511. <https://doi.org/10.1080/01944363.2010.508428>
- Schimmelfennig, F., Engert, S., & Knobel, H. (2003). Cost, commitment and compliance: The impact of EU democratic conditionality on Latvia, Slovakia and Turkey. *Journal of Common Market Studies*, 41(3), 495–518. <https://doi.org/10.1111/1468-5965.00432>
- Shyrokykh, K. (2021). Why climate? The drivers of the European Union’s climate governance in its Post-Soviet East European neighbors. *Problems of Post-Communism*, 69(4–5), 358–368. <https://doi.org/10.1080/10758216.2021.1974888>
- Shyrokykh, K. (2022). Help your neighbor, help yourself: The drivers of European Union’s climate cooperation in trans-governmental networks with its neighbors. *Governance*, 35(4), 1095–1118. <https://doi.org/10.1111/gove.12646>
- Shyrokykh, K., Busol, K., & Koval, D. (2025). European integration and reforms in Ukraine amidst the war. In M. Rabinovych & A. Pintsch (Eds.), *Ukraine’s thorny path to the EU: From “integration without membership” to “integration through war.”* Palgrave Macmillan.
- Shyrokykh, K., Dellmuth, L., & Funk, E. (2023). Managing networks: Cohesion and fluidity in EU climate cooperation with European neighbours. *European Union Politics*, 24(3), 539–558. <https://doi.org/10.1177/14651165231152836>
- Shyrokykh, K., & Zasiadko, Y. (2023). Post-war reconstruction of Ukraine and the role of the Nordic Countries. *Fast Track to Vision 2023*. <https://www.nordforsk.org/2023/fast-track-vision-2030>
- Tiainen, S. (2017). The implementation of the chapter on environment of the EU-Ukraine Association Agreement: Current situation and key challenges. *EU-Ukraine Civil Society Platform*. Brussels. https://www.eesc.europa.eu/sites/default/files/resources/docs/report_environment_eu_side.pdf
- Ukraine Recovery Conference. (2022). *Environmental recovery*. Lugano, 4–5.07.2022. https://uploads-ssl.webflow.com/621f88db25fbf24758792dd8/62bd020b4b6cf255d85115aa_ENG_Environmental%20Recovery_URC.docx.pdf
- Wolf, M. J., Emerson, J. W., Esty, D. C., de Sherbinin, A., Wendling, Z. A., et al. (2022). *2022 Environmental Performance Index*. New Haven, CT: Yale

Center for Environmental Law & Policy. <https://epi.yale.edu/epi-results/2022/component/epi>

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Higher Education Amid the War: A Resilience Test for Ukraine's Integration into the European Higher Education Area

Halyna Protsyk

I INTRODUCTION: THE RESILIENCE OF HIGHER EDUCATION AMIDST ARMED CONFLICTS

The Education Under Attack report (GCPEA, 2022) profiled 28 conflict-affected countries where higher education experienced recurrent acts of armed violence in 2020–2021. Ukraine is the only European country included in this classification, which is the result of facing military aggression by the Russian Federation since 2014. Milton and Barakat (2016) point out four types of challenges that higher education within conflict-affected settings encounters: physical devastation, displacement of populations, conditions resulting from warfare (material, logistical, education quality, academic isolation, etc.), and the sector's limited resilience due to the necessity for increased financial backing, skilled workforce, technical resources, and advanced management for proper functioning. Various studies point out that conflict-affected countries such as Iraq, Afghanistan, Syria, Somalia, and South Sudan, are grappling with the devastating consequences of violent conflict and war, leading to the

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widespread destruction and collapse of higher education systems and institutions (Heleta, 2015).

Several studies indicate that higher education often faces neglect during active conflict and is not given priority in post-conflict reconstruction efforts (Agresto, 2007; Buckland, 2005; Milton & Barakat, 2016). Funding for higher education is frequently minimal, with it being perceived primarily as a long-term developmental investment. After conflicts, resources and attention are diverted away from higher education towards crucial sectors like healthcare, basic education, infrastructure, communications, and the legal system.

We argue that a viable higher education sector is strategically important for the state's overall survival amid the ongoing armed conflict and post-conflict recovery. Evidence documents how higher education serves a critical role in state resilience during active armed conflicts and catalyzes recovery in conflict-affected societies (World Bank, 2022a; UNICEF, 2019; Ritesh, 2019; UNESCO, 2011). In the face of adversity such as armed conflicts, education plays a triple role as a demanded community service, a broad-reaching societal platform, and a central hub for community response and recovery, showcasing its symbiotic relationship with resilience. High-quality, inclusive, accessible, equitable, and safe education services also strengthen a range of cross-sectoral outcomes that reinforce the resilience of people, households, and communities, like social human capital, gender equality etc. (Ritesh, 2019). With proper backing, universities have the potential to empower individuals and communities by offering advanced capabilities in areas such as stabilization, bolstering governance and institutions, nurturing human capital, driving innovation, and advancing state-building. This, in turn, paves the way for peace-building, economic reconstruction, and development. These capacities are also essential for affected communities to truly take charge of the recovery process while collaborating with external donors, international organizations, and other developmental stakeholders. After all, the degree of ownership determines the success or failure of post-conflict recovery. So, cultivating higher education's resilience during the active phase of armed conflict determines how well and quickly an affected country can rebuild its capacities and avoid fragility.

Broadly defined, resilience is the ability to recover, perform, or even grow or transform in the context of adversity (World Bank, 2013). A variety of actors supporting educational programmes within conflict and crisis contexts have distinct interpretations of "resilience". Although they

collectively recognize it as vital for minimizing conflict risks and maintaining functionality during emergencies to preserve learning and well-being outcomes in the face of adversity, they diverge in their approaches to specifying the scope and levels at which resilience should function. Most organizations view resilience as a quality primarily at the individual or community level, rather than one that pervades a system, such as education. However, fostering such individual resilience also requires institutional support and social services (Ritesh, 2019). Today the definition of resilience has expanded to include an understanding of the relevant programmes and services within institutions and systems to foster resilience. Within educational systems, resilience encompasses not only the resources and vitality of the educational community but also the pertinent policies and programmes aimed at assisting marginalized groups in surmounting challenges and achieving favourable educational outcomes (World Bank, 2013). A resilient education system ideally continues to provide safe, equitable access to quality education in the face of adversity and ensures that learning and broader well-being outcomes are sustained rather than squandered in the midst of crisis (Ritesh, 2019).

A resilient approach in a conflict-affected education system is concerned with programming in order to absorb, adapt to, or transform systems in response to shocks and stressors. A growing body of research suggests that education systems can cultivate resilience in times of adversity by identifying and capitalizing on existing resources, capacities, networks, and assets. Ritesh (2019) refers to these assets, resources, or networks as “resilient capacities” that depending on individual, community, or institutional levels can take the form of absorptive, adaptive, or transformative resilient capacities. Absorptive resilient capacities are the individual’s ability to minimize exposure and sensitivity to shocks and stressors through preventative measures and coping strategies (basic literacy, numeracy, life skills, awareness of risks, etc.). Adaptive resilient capacities are the ability of individuals and communities to make informed choices and changes in response to longer-term change (like retrofitting of educational facilities, relocation of infrastructure supporting remote learning and remedial education etc.). Conversely, transformative capacities demand collaborative endeavours starting from the community level and extending upwards, demonstrating the capacity of communities and institutions to create a conducive setting for systematic transformation via their governance structures, policies, regulations, community networks, and both formal and informal social safety measures (Ritesh,

2019). Simultaneously addressing educational policy reforms, bolstering institutions, enhancing capacity, and simultaneously advancing equitable and pertinent educational opportunities in conflict settings can promote peace-building efforts and the longer-term development agenda of education systems. Finally, studies on education system resilience stress that it also requires forging links among external actors and developmental agencies, public, private, and civil society partnerships, as well as the state's capacity and willingness (Reyes, 2013). Another study highlights the importance of international collaboration and assistance underling that during the times of educational disruptions they should be leveraged balancing between assistance and county ownership to avoid omission and duplication (King, Suryadarma et al., 2022).

The onset of Russian military aggression against Ukraine in 2014, beginning with the occupation of Crimea and the Donbas region, has had various far-reaching effects on Ukraine's education system. The ensuing full-scale war in 2022 has introduced further disruptive shocks and stressors that have particularly impacted the system of higher education. This chapter looks at Ukraine as a distinctive case study to explore the resilience of its higher education sector and focuses on its transformative resilient capacities deployed to overcome the adverse consequences of the war, advance the country's European integration and facilitate a swift national recovery. We argue that the process of aligning with the European Higher Education Area (EHEA) and Bologna system, as delineated by the Association Agreement, has significantly contributed to fortifying the resilience of Ukraine's higher education system and formed the backbone of its transformative resilient capacities. The EU endorses these initiatives in its Member States and neighbouring nations, including Ukraine, recognizing their significance for education quality and competitiveness on a global scale. However, as outlined in Article 6 of the Treaty on the European Union, the EU's role in education is limited to support, coordination, and potential supplementation of Member States' actions (European Union, 2012). EHEA and the Bologna process are initiatives related to higher education that were initiated by European countries, not specifically by the EU. The EHEA, stemming from the Bologna process, is a collaborative space where national higher education systems enact reforms and standards for mutual qualification recognition, student mobility, and cooperation among educators. It involves participating countries, like Ukraine, voluntarily synchronizing their systems with the EHEA goals.

Accordingly, the chapter offers a thorough analysis of the status quo of Ukraine's higher education system before the full-scale war, emphasizing the reforms and policy initiatives built up to align Ukrainian tertiary education with EHEA principles despite the ongoing conflict. It offers a summary of the policy responses enacted between February 2022 and May 2023 in response to the full-scale war, aiming to bolster the resilience of the higher education system and bring it into alignment with the standards of the European Higher Education Area (EHEA). Furthermore, it delves into the subsequent tactics required to consistently bolster and propel Ukraine's higher education system, setting the stage for additional reforms aimed at supporting post-war transformative capacities and its further aligning with the European Education Area (EEA)¹ associated with its candidate status.

2 TRANSFORMATIVE REFORMS IN THE HIGHER EDUCATION SECTOR OF UKRAINE BEFORE THE FULL-SCALE WAR.

Russia's military aggression against Ukraine, which has been lasting since 2014, produced significant shocks and stressors for the higher education sector. It has been estimated that the Russian invasion has cost Ukraine US\$280 billion in lost GDP between 2014 and 2020 (Neufeld & Neufeld, 2022). Consequently, the higher education sector has been substantially underfunded (Ministry of Finance of Ukraine, 2023). In addition to large economic and territorial losses, in the first stage of Russian aggression against Crimea and Donbas, Ukraine lost a number

¹ At the time of chapter submission, Ukraine was approaching the status of a candidate for accession to the European Union, a designation granted by the European Council's decision on the 23rd June 2023. The subsequent decision by the European Council on the 14th December 2023, to commence accession negotiations with Ukraine paves the way for the next phase of aligning its higher education sector with the principles of the European Education Area (EEA). This represents a significant qualitative stage and milestone in supporting Ukraine's post-war transformative capacities and making substantial progress towards fulfilling the criteria in the higher education sector associated with its candidate status. The EEA aims to foster collaboration among European Union (EU) Member States to enhance national education and training systems, ultimately striving to enhance access to quality education and lifelong learning for all EU citizens. This vision for a European education area was initially endorsed by EU leaders at the Gothenburg Social Summit in 2017.

of Higher Education Institutions (HEIs), teaching staff, and students. Forty-eight universities with a significant number of students and teachers remained in the non-Ukrainian controlled territory, while 17 universities from Donbas and Crimea with almost 40,000 students and more than 3,000 teachers and scholars were relocated to other regions of Ukraine (Antoniuk, 2023). The viability of Ukraine's higher education system was put to the initial resilience test after it had assumed the responsibilities outlined in the AA.

2.1 Achievements of Higher Education Reforms in Ukraine Preceding the Full-Scale War

The signing of the AA between Ukraine and the EU solidified Ukraine's commitment to a European path and served as a fundamental framework and roadmap for implementing significant, wide-ranging political, socio-economic, legal, and institutional reforms in Ukraine. Ukraine's commitments in the field of higher education are defined in Chapter 23 "Education, training, and youth" of Section V "Economic and sectoral cooperation" and specified in the Action Plan for the Implementation of the Association Agreement (Cabinet of Ministers of Ukraine, 2017; EU-Ukraine, 2014). Article 430 declares that the Parties promote the development of cooperation in the field of education, training, and youth policy to improve mutual understanding, intensify intercultural dialogue, and strengthen knowledge about the respective cultures. In Article 431, it was noted that the Parties undertake to intensify cooperation in the field of higher education with the aim of reforming and modernizing higher education systems, promoting rapprochement in the field of higher education within the framework of the Bologna process, increasing the quality and importance of higher education, deepening of cooperation between higher educational institutions, expanding opportunities for higher educational institutions, and activating mobility of students and teachers. In addition, Article 433 anticipates the possibilities of developing cooperation in other areas, in particular in the field of distance learning and lifelong education (EU-Ukraine, 2014).

The envisioned outcomes of tertiary education reforms include implementing international assessment and monitoring to foster university autonomy and enhance higher education management, promoting mutual recognition of academic qualifications for increased mobility and wider opportunities, strengthening dialogue on distance learning, and

lifelong learning, as well as fostering increased international exchanges and collaboration in non-formal youth education, including through EU programmes like Erasmus + (Government Office for Coordination on European & Euro-Atlantic Integration, 2022). In short, the strategic collaboration priorities in higher education include the introduction of a three-cycle system, ensuring quality education, promoting degree recognition, and mobility for students and faculty. Between 2014 and 2022, extensive transformative reforms were undertaken within Ukraine's higher education system, focusing on aligning educational legislation to Bologna requirements.

Ukraine submitted its application to join the Bologna Process in 2003. As part of the Tempus programmes, the European Credit Transfer and Accumulation System (ECTS) became compulsory for all HEIs in Ukraine starting from 2009. In 2006, Ukraine established the National Center for Quality Assurance of Education, and in 2008, it introduced external independent testing (EIT) for undergraduate admissions, aiming to ensure equal opportunities for education and a transparent and independent admissions process to tertiary education. Starting in 2020, it became mandatory to pass the EIT in a foreign language (usually English) for admission to master's programmes, which encourages universities to enhance students' proficiency in the foreign language and enhances mobility.

The 2014 Law of Ukraine "On Higher Education" and its further amendments incorporated the fundamental aspects of the EHEA into Ukrainian legislation. These aspects encompassed the independence of educational institutions, the existence of four levels of higher education, the elimination of Soviet degrees, and the introduction of doctoral degrees (refer to Fig. 1) (Verkhovna Rada of Ukraine, 2014). After the reform in 2018, Ukraine was acknowledged as a country where the Diploma Supplement in the European EU/Council of Europe/UNESCO format is automatically issued to each graduate of the first and second cycle, in a widely used European language. Since 2014, Ukrainian universities have experienced a substantial increase in their academic autonomy (Kahanec et al., 2022). This also allowed HEIs to begin instituting their internal quality assurance systems and expanding international collaboration.

Based on European standards and guidelines (ESG), a new quality assurance system for higher education was implemented. In 2015, the National Agency for Quality Assurance in Higher Education (NAQA)

was established with the task of ensuring external quality assurance and accreditation of educational programmes, involving representatives of stakeholder groups. Since 2019, a modern system of external quality assurance based on ESG has been operating. In a short period of time, NAQA's activities and Ukraine's external quality assurance system became fully correlated with EHEA approaches with tertiary institutions' internal quality systems following this reform (Kvit, 2020).

The signing of the Association Agreement fostered the progressive development of the National Qualifications Framework (NQF) in alignment with the European Qualifications Framework (EQF). The process that had started in 2010, now engaged numerous stakeholders including the Ukrainian Cabinet of Ministers, along with the Ministry of Education and Science and the Ministry of Economy and encompassed all levels of education and training that were transformed into a fully functional framework. The 2017 Law on Education fostered this progress and regulated educational and professional qualifications, including the use of occupational standards (Verkhovna Rada of Ukraine, 2017). Pre-tertiary vocational education was also introduced, aligning with NQF descriptors and levels. The establishment of the National Qualifications Agency in 2019 further enhanced coordination among government and social partners as it began maintaining the qualifications registry, overseeing occupational standards development, supporting educational standards, accrediting qualification centres, recognizing non-formal and informal learning, and establishing criteria for recognizing foreign qualifications (European Commission, 2023b).

Ukraine stood out as an active Eastern Partnership country in the Erasmus + programme from 2014 to 2020, with a consistently high number of funded projects, driving the development of international academic mobility, institutional cooperation, and European studies. The Law of Ukraine "On Higher Education" and the Cabinet of Ministers decree on academic mobility rights (2022a) played crucial roles in promoting internationalization, leading to over 17,000 successful academic mobilities and numerous Erasmus Mundus scholarships for students. Furthermore, over 200 projects were implemented to enhance higher education potential, innovation, adult education, policy reform, and Jean Monnet initiatives (Shytikova, 2021).

According to the national report assessing the progress of implementing the Association Agreement (AA) in 2022 (Government Office for Coordination on European & Euro-Atlantic Integration, 2023),

Ukraine has fulfilled 86% of its obligations in the education, training, and youth sectors. The European Commission (2022a) recognized that Ukraine had a well-developed education system, with a substantial portion of the population (above 80%) having higher education. The significant progress of Ukraine's education system in aligning with EU objectives has been further acknowledged by the European Commission's supplementary report on Ukraine (2023a) and provided a solid foundation for active participation in EU higher education policy and cross-border collaboration.

However, it was also emphasized that there was a need to better align the curricula and overall quality of higher education with labour market requirements, despite the government's investment in the sector, in particular, 5.7% of GDP in 2021 (European Commission, 2022a). In addition to this opinion, Ukraine's higher education system faced challenges in meeting EHEA standards, including a scattered network of tertiary institutions, financial autonomy deficiencies, academic integrity issues, and limited internationalization outlined in the Bologna process in Ukraine review by the National Erasmus + Office (Erasmus + National Office in Ukraine, 2020). It also shows some other areas of concern in the implementation of the Bologna Process provisions such as "challenges related to mobility (such as the provision of mobility loans and grants, visas and work permits, and automatic recognition of qualifications), the structure of higher education cycles (including the recognition of a separate short cycle level in the National Qualifications Framework), social inclusion in higher education, lifelong learning (particularly in developing entrepreneurship competencies and enhancing employability through employer cooperation), the European approach to ensuring quality in joint programmes, and aspects of teaching and learning (such as relevance, quality, innovation, inclusion, and digitalization)" (Erasmus + National Office in Ukraine, 2020, 31). Internationalization of higher education in Ukraine was another issue of concern, with low student and staff mobility rates, limited comprehensive strategies for international cooperation, and low engagement in strategic partnership projects with EU institutions. The COVID-19 pandemic further hindered digitalization and collaboration in higher education.

2.2 *Ukraine's Higher Education Status Quo*

As of October 2021, just before Russia's full-scale invasion, Ukraine had a disproportionately large network of HEIs. Nearly 1,248 institutions were listed in the Unified State Electronic Education Database (EDEBO), including universities, colleges, separate structural subdivisions, and research institutions (Kvit, 2022). The EU in comparison has 2,706 officially recognized higher education institutions, including research universities, applied sciences or technological universities, and high schools (uniRank, 2023). In Ukraine, the majority of tertiary institutions (59.6%) are state-owned with a very weak financial autonomy, 33.8% are private, and 6.6% are municipal-owned, while in the EU, the majority (70.8%) are public institutions and 28.1% are private (uniRank, 2023). The country had over 1 million students pursuing higher education degrees, with 25,668 doctoral students and 76,548 international students from 155 countries. The teaching staff in tertiary institutions amounted to 160,334 individuals (State Statistics Service of Ukraine, 2021). Tertiary education is highly valued in Ukraine, with a strong desire among Ukrainian high school students to pursue it. However, the absolute number of tertiary students has declined by 45% between 2010 and 2021, leading to institutions with relatively small student populations (Ukraine Education Cluster, 2022). Overall, the reforms achieved until Russia's full-scale attack have contributed to significantly strengthening Ukraine's transformative resilient capacities, which proved essential during the war.

3 THE IMPACT OF WAR ON UKRAINIAN HIGHER EDUCATION: CULTIVATING RESILIENCE THROUGH ADAPTATION TO SYSTEM'S SHOCKS AND STRESSORS

In response to the Russian aggression, Ukraine swiftly implemented regulations for the educational sector under martial law (President of Ukraine, 2022; Verkhovna Rada of Ukraine, 2015). These regulations transferred educational management authorities' powers to state military administrations. The Ministry of Education and Science of Ukraine (hereinafter "MESU") maintained its central role in overseeing education policies, scientific activities, and financial supervision. It ensured the continuity and safety of the educational process by establishing a Situation Center

to support the Minister of Education and Science (Ministry of Education & Science of Ukraine, 2022a). This framework enabled nationwide coordination, decentralized decision-making, and prompt responses to local educational challenges caused by armed aggression. In line with the MESU decree No. 235 regarding the organization of vocational, pre-university, and higher education institutions during martial law, during the first week an institutional framework has been established to safeguard the well-being of participants in the educational process, employees, and the assets of educational institutions (Ministry of Education & Science of Ukraine, 2022b). This includes implementing evacuation measures if needed and creating special study arrangements (such as individual schedules and academic leaves) for students involved in the Armed Forces, territorial defence units, or volunteer work. MESU has simultaneously prioritized post-war requirements and developing strategies for the reconstruction and revitalization of the education sector in its March 2022 emergency plan where the issue of brain drain, with academics and students leaving the country, was treated as equally important as the significant physical damage caused by the war (Ministry of Education & Science of Ukraine, 2022d).

3.1 Human Capital Losses and Displacement of Students and Faculty

The prolonged war in Ukraine poses a significant threat of brain drain and talent loss, which is considered to be one of the country's most significant losses (European Bank for Reconstruction & Development, 2023). The loss of human resources is a significant issue due to some teachers and students relocating abroad to find better work and study conditions, which could lead to a decrease in the number of young, ambitious, and promising teachers. According to the UN High Commissioner for Refugees (UNHCR) Operational Data Portal (2024), by 31st March 2024, the war in Ukraine has resulted in over 6 million Ukrainian refugees registered globally. In addition, as of May 2023, there were 5.1 million internally displaced Ukrainians who officially registered as fleeing their habitual place of residence due to the war (International Organization for Migration, 2023). As of May 2022, data from the World Bank (2022b) indicates that approximately 16% of enrolled students in tertiary and secondary education, along with more than 6% of educators, have fled the country. According to the Ukraine Education Cluster report

(2022), which surveyed 1,247 tertiary institutions in Ukraine, approximately 63% of tertiary institutions stated that up to 30% of their students were internally displaced, while 91% confirmed that up to 30% were evacuated to foreign countries. Concerning academic staff members, half of the surveyed tertiary institutions reported that up to 30% of their teaching staff were internally displaced, and 81% mentioned that up to 30% were presently abroad. The recent survey conducted by the EU Agency for Fundamental Rights among displaced individuals from Ukraine shows that 35% of those surveyed expressed their intention to return to their homeland, while 37% indicated a desire to remain in the host country (Osadcha, 2023). These figures point to the heightened risk of potential human capital depletion and brain drain.

To enable students to continue their studies in Ukraine, and teachers to maintain official and stable affiliations with HEIs, the MESU has supported strategies that foster collaboration between Ukrainian and European universities and make the system of academic mobility for students and academic staff smooth and flexible. The promotion of joint and double degree programmes and the recognition of academic mobility have been considered as valuable tools to stabilize the situation. The amended regulation of academic mobility (Cabinet of Ministers of Ukraine, 2022a), which will ensure the right to safe education for students who have been forced to leave their place of permanent residence or Ukraine, facilitates their return to Ukraine after the war, and guarantees safe working conditions for academic personnel, preserving their positions at their primary place of employment for up to 2 years. MESU also encouraged joint and double degree partnerships between Ukrainian and foreign universities to enable students to study at Ukrainian institutions and receive Ukrainian degrees. It also supported international grant scheme programmes like Ukrainian Global University anticipating obligations for students to return to their home universities or participate in joint programmes with Ukrainian universities (Ukrainian Global University, 2022).

Nearly 51,676 foreign students were enrolled in Ukrainian universities at the beginning of 2023, almost 30,000 fewer than there were prior to the large-scale war (Lukanska, 2023). To retain students despite the war, universities have provided several alternatives such as academic mobility, dual degree programmes, establishing campuses in secure areas within and outside the country, and blended education—remote learning

in Ukraine followed by an internship in the country of student residence (Shapovalova, personal communication, 18 April 2023).

3.2 *The Destruction and Relocation of HEI Infrastructure*

As of 10 May 2023, 159 damaged and 23 destroyed tertiary education institutions were reported (Education in emergency, 2023). The Russian invasion disrupted the development of higher education, with varying impacts on universities based on their location: institutions in the West sustained the educational process despite challenges, those in the Center restarted with minor issues, while institutions in the East faced significant complications, requiring relocation and renovation. According to the Ukrainian Institute of Educational Analytics report (Shkarlet et al., 2022), the war and Russian aggression in Ukraine from 2014 to 2022 led to the relocation of 140 pre-higher and higher education institutions and their separate units within the country. This accounts for 11.7% of the total number of such institutions, distributed across 16 cities in 14 regions of Ukraine.

Based on the experience of 2014, the swift relocation of universities during March–May 2022 was regulated by over 50 MESU decrees in either a “minimal” or “expanded” format, with most universities opting for the “minimal” format where key personnel and certain staff members travelled to controlled territories, while teaching continued through distance learning. A smaller number of universities chose the “expanded” format, involving the relocation of administration, teachers, and students to different locations. In total, 25 independent higher education institutions and 19 separate units of universities were relocated, accommodating over 54,000 students and employing nearly 7,000 teachers in 16 cities across Ukraine (Nikolayev et al., 2022). Along with numerous organizational, technological, financial, and psychological issues, the tertiary education network in Ukraine has become highly inefficient, characterized by medium-sized institutions surrounded by numerous legally independent satellite campuses offering similar educational services, necessitating a superlative reforming of network optimization due to the impact of the war.

3.3 *The Impact of the War on Education Management, Financial Autonomy, Education Quality, and Service Delivery*

Tertiary institutions are grappling with financial difficulties caused by the 15% reduction of state funding in April 2022, budget cuts of 19% in 2023 as well as a loss of tuition fees (Osadcha, 2022). The increased costs associated with adapting to martial law conditions and relocation have led to 20% of educational institutions experiencing interruptions in paying salaries to their employees, and 23% facing delays in transferring scholarships to students, posing a significant risk to the education sector's stability and potential loss of human resources (Antoniuk, 2023). Dobko (2022) underlines the challenge of the fierce competition among the Ukrainian HEIs for public funds and international aid against the urgent needs of secondary education, health care, security, and reconstruction given the loss of 30% of GDP, 30% inflation forecast, and 30% currency devaluation, combined with the growing needs for the rebuilding of the devastated country. In general, the Rapid Damage and Needs Assessment (Himmelfarb, 2023) jointly developed by the World Bank, the Government of Ukraine, the European Commission, and the United Nations reports that as of 24 February 2023, i.e., after a year of full-scale war, the education sector in Ukraine has suffered direct damage exceeding US\$4.4 billion, with facilities in five regions severely affected. Additional losses of at least US\$0.8 billion were incurred due to various factors such as decreased tuition collection and additional costs for sheltering and unpaid salaries. Tertiary institutions alone reported losses of over US\$115 million for equipment destruction and operational expenses during wartime (Ukraine Education Cluster, 2022). The estimated cost for overall recovery and restoration in the education sector is projected to be US\$10.6 billion (Himmelfarb, 2023).

Ukrainian tertiary institutions have faced the daunting task of maintaining their operations and reducing financial losses while ensuring that the quality of education remains high enough to produce competent professionals during wartime. After the two-week break in the educational process recommended by MESU decree on 25 February 2022, 62% of tertiary institutions reported to resume their services online or in hybrid format facilitated by their experience during the COVID-19 crisis (Ministry of Education & Science of Ukraine, 2022c; Ukraine Education Cluster, 2022). Owing to the pandemic experience, Ukrainian tertiary

institutions have successfully adapted to wartime conditions by implementing distance and hybrid education models, utilizing digital technologies. Despite challenges such as blackouts, limited technical support, and internet access, efforts have been made to address inequalities and support students' individual trajectories (Marchuk, 2023). To mitigate educational losses, partnerships with major MOOC platforms like Coursera, Udemy, or EdX have been established by MESU offering free online courses recognized by all HEIs thus allowing displaced students to continue their study programmes. Additionally, a new MESU decree allows for learning outcomes from non-formal or informal providers to contribute to study programmes (Ministry of Education & Science of Ukraine, 2022e).

Due to infrastructure destruction, HEI relocation, and migration of the Ukrainian academic community, Ukraine had to relax external quality assurance requirements and compromise on institutional governance, undermining EHEA standards. Simplified accreditation procedures, remote assessments, conditional accreditation, and reduced admission standards were implemented to face the adversity. Some universities formed “new” institutions (usually through merging process and the official title change) to extend leadership terms (Nikolayev et al., 2022).

4 EHEA RESPONSE TO RUSSIAN INVASION: SUPPORTING RESILIENCE FOR RECOVERY AND REFORM MEASURES

Despite the harrowing realities of the war, safeguarding the EHEA fundamental principles defined in the Rome Ministerial Communiqué 2020 (hereafter Rome Communiqué), including academic freedom, democracy, and the rule of law, has become the primary mission of the Ukrainian academic community (Ministry of Education and Science of Ukraine, 2020). The preservation of these values played a pivotal role in determining the EHEA's resilience, sustainability and cohesive spirit, which are inherently intertwined with the fundamental principles of the European Union. Driven by the academic community's determination, the MESU urged the international Bologna Follow-up Group to advocate for justice and to sever ties with Russia. On 24th March 2022, the Government of Ukraine decided to terminate the effect of all international agreements between Ukraine and the aggressor country and its ally, the Republic of

Belarus, including Ukraine's withdrawal from the Agreement on Cooperation in the field of education, science and culture (Cabinet of Ministers of Ukraine, 2022b).

Russia's firm anti-democratic stance triggered a strong condemnation of the Russian aggression from the entire European academic community. Following the implementation of the fifth package of sanctions by the European Commission (2022b) and the withdrawal of grant funding from Russia under the Erasmus + programmes, the international Bologna Follow-up Group met and issued a statement suspending the EHEA memberships of Russia and Belarus, while urging EHEA members to offer support and protection to those condemning the war at their own risk, showcasing the unwavering solidarity of the European education community in defending the EHEA principles (Bologna Follow Up Group, 2022). This academic solidarity enabled the elaboration of prompt decisions and numerous assistance programmes by the EU, national governments, universities, and donor organizations. The fact that Ukraine has been a part of the Bologna Process has undoubtedly been a contributing factor. Below, we will examine the main steps taken by the EU and Ukraine that, in our opinion, helped to stabilize and ensure the EHEA's resilience in terms of migration of academics, recognition of their qualifications, fostering internationalization, and supporting the continuation of higher education sector reform.

Overview of the Response and Support Provided by the EHEA and Its Member Countries to the Ukrainian Academic Community During the War.

In view of the massive numbers of refugees from Ukraine, the EU activated the Directive temporarily providing rights similar to the ones of EU citizens with unrestricted access to the labour market and education (Council of the European Union, 2022a; see also Lazarenko and Rabinovych, 2025). In accordance with the Council Implementing Decision, the European Commission approved the Cohesion's Action for Refugees in Europe (CARE) proposal, which allowed member states and regions to offer immediate aid to those fleeing Ukraine (Council of the European Union, 2022b). Additionally, the European Commission released a statement (2022d) outlining measures to assist displaced learners and educational personnel from Ukraine. Institutions involved in ongoing Erasmus + Key Action 2 cooperation projects had the option to voluntarily allocate a portion of their funds to support Ukrainian refugees. Furthermore, within the framework of Erasmus + Key Action

1 (mobility), universities could offer extended study mobility lasting up to 12 months, as well as short-term study mobility, training or teaching mobility for staff, and traineeships with financial backing from Erasmus + funds (European University Association, 2022). In addition to these measures, top-level education authorities across Europe developed large-scale responses aiming to assist HEIs in integrating refugee tertiary learners from Ukraine, including host language training, psychological counselling, academic guidance, introductory or welcome courses, but also financial support (mainly in the form of non-repayable grants or scholarships) and reserved study places. Overall, 29 European countries indicated that they had such measures (European Commission, 2022d).

Apart from solidarity, there was also a test case for some of the Bologna principles' implementation, including recognition of study periods and qualifications and mobility. In many EU countries, the arrival of Ukrainian students pursuing degrees and academic staff obtaining positions has also triggered flexible processes for granting access and an overdue transposition of the Art. VII of the Lisbon Recognition Convention into national regulation, allowing institutions to take in students and staff without documentation. For that reason, the European Commission published a recommendation on the recognition of academic and professional qualifications for people fleeing Russia's invasion of Ukraine, thus aiming to provide national authorities with guidance and practical advice to ensure a quick, fair, and flexible recognition process (European Commission, 2022e). This document was also complemented by the special fast-track guidelines designed to provide specific support to EU HEIs and national centres for the recognition of educational qualifications in the evaluation of educational documents issued by Ukrainian educational institutions, taking into account the relevant competencies (Lantero et al., 2022). Thus, the developed policies and steps were able to not only protect the fundamental rights and freedoms of the affected academic individuals but also practically verify the effectiveness of the core EHEA principles.

4.1 Fostering Internationalization and Capacity Building of Ukrainian Tertiary Institutions

The large-scale destruction and damaging of tertiary education infrastructure along with the need to support the Ukrainian higher education sector to function and reform have enhanced institutional collaboration between Ukrainian and European universities and organizations. A

special emphasis was put on Erasmus + projects aiming to support HEI capacity building. To support Ukrainian tertiary institutions the European Commission (2022c) has introduced special flexible procedures and exceptional measures within the Erasmus + Programme regarding the implementation of cooperation projects for adaptation to the challenges of martial law. Additionally, the potential for extended participation in ongoing grant projects was also validated as well as the additional submission dates for the Jean Monnet calls for higher education institutions that could not participate due to the beginning of the war.

As a result of the immediate response in 2022, 13 projects involving 51 Ukrainian and 65 European universities under the Erasmus+ Capacity Building in Higher Education programme, 93 Jean Monnet projects coordinated by 43 Ukrainian universities, and two projects involving five Vocational Education and Training providers have been selected for funding. Ukraine has received the biggest number of projects in the Eastern Partnership Region and is among the top 12 participating countries in the programme (Shytikova, 2022). The revised Erasmus + programme budget for 2023 includes a €100 million frontload to support educational projects and the integration of war-displaced individuals from Ukraine. The international dimension of Erasmus + is strengthened with a €31 million budget increase for capacity building in higher education and international cooperation to create an open education digital environment, providing quality education and training to Ukrainian students, displaced individuals, and the wider Ukrainian community abroad through collaboration between Ukrainian and European universities (European Commission, 2023c).

The European Universities Alliances have broadened their collaborations with affiliated HEI partners in Ukraine, granting increased access to their resources. In particular, the “Solidarity with Ukraine” programme by the Polish National Agency for Academic Exchange provided substantial funding for Ukrainian tertiary institutions to join 18 Alliances to achieve long-term collaboration of partners as well as broader internationalization when it comes to adapting Ukrainian HEIs to EU standards and principles under the European Economic Area or the European Research Area (Polish National Agency for Academic Exchange, 2023).

Additionally, Ukrainian universities and their staff have joined various professional networks including the European Association for International Education, the European University Association, and similar organizations, thereby obtaining enhanced opportunities to participate

in their events and access their data. The Erasmus Students and Alumni Networks have also actively rallied their efforts in supporting Ukraine. Collaboration with EU and non-European universities was prioritized for curriculum development, digitalization, inclusivity, teaching excellence, and quality assurance. This commitment to multiple fronts aimed to achieve a broader transformation of the Ukrainian higher education system, with the Erasmus + Programme playing a crucial role (Shytikova, 2022). These efforts have a potential to address the risk of brain drain and establish a sustainable system-level support for the recovery of Ukrainian universities and the country as a whole.

Planning for Post-War Recovery and Sustaining the Relevance of the EHEA and Bologna Process

The vision for further development of the EHEA by 2030 is outlined in the Rome Communiqué which emphasizes a vital role in the attainment of the United Nations' Sustainable Development Goals (SDGs). The fundamental values of higher education, including academic freedom, university autonomy, and the rule of law are in the spotlight of the vision for a new decade. Ukraine has joined the support of these goals and is committed to implementing them within the national system (Ministry of Education and Science of Ukraine, 2020). Ukraine, as a signatory of the Bologna Process, has committed to developing an inclusive, innovative, and interconnected European Higher Education Area, ensuring quality higher education, supporting a culture of academic and scientific integrity, adhering to institutional autonomy and academic freedom, involving students and staff in higher education governance, and embracing public responsibility. To meet these milestones, Ukraine's main task is to retain transformative resilience through providing equal educational opportunities for individuals of all social groups throughout their lives and promoting digitalization for social inclusion, developing the flexibility in learning trajectories by introducing short educational programmes, and the recognition of European qualifications. The Ukrainian tertiary education system also needs more powerful and autonomous HEIs with deeper cooperation at national and transnational levels, such as through European University Alliances (Personal communication with Nataliya Pipa, May 2023).

On the eve of the full-scale invasion, on 23 February 2022, MESU published the Strategy for the development of higher education for 2022–2032, which comprehensively outlines the directions and objectives of the transformation of the higher education system in Ukraine. Overall,

the Strategy is oriented towards Ukraine's accession to the European Union and aims to ensure the harmonization of tertiary education with the EHEA commitments and the obligations outlined in the Association Agreement. The main strategic goals clearly align with the vision of the Rome Communiqué and anticipate the efficient management of the higher education system, development of trust from citizens, the state, and businesses towards educational, scientific, and innovative activities of HEIs, ensuring the quality of educational and scientific activities, competitiveness of higher education accessible to different population groups, and internationalization of Ukrainian higher education (Ministry of Education & Science of Ukraine, 2022f). The full-scale war has not diminished the relevance of the Strategy but has necessitated adjustments to certain priorities, which formed the basis of the Recovery Plan for Ukraine, officially presented by Ukraine's Prime Minister at the conference in Lugano in July 2022.

The Recovery plan, which contains a "Higher Education" section, includes seven main goals and a set of tasks that present the vision and ways of development of education and science in the conditions of martial law and post-war recovery. In particular, it contains a description of specific national projects to attract international investments. The Plan is largely aligned with the Strategy 2022–2032, however, it predominantly addresses the challenges posed by the consequences of the pandemic and war-related destruction and incorporates a strategy to seek funding for these needs. As a priority within the state budget, the Government proposes the modernization of the network of vocational and higher education institutions and envisages expanding budgetary funding and co-financing for higher education, granting HEIs broad autonomy, including financial autonomy, measured by the methodology of the European University Association. It is worth noting the focus made on restoring the potential of tertiary education and ensuring the rights and freedoms of internally displaced persons and residents of the temporarily occupied territories in the field of education, as well as the revival of the activities of vocational education and higher education institutions in the de-occupied territory. To achieve this goal, the Government plans to attract funds from international technical assistance. The Recovery Plan includes the goal of internationalization of higher education and recognizes it as one of the key opportunities for this sector. The main resources will be also allocated to ensure comparability and recognition of Ukrainian educational qualifications in Europe and the

world, as well as the adoption of best foreign educational practices in Ukraine. Among other priority goals to be addressed in the next decade are building trust among citizens, the state, and higher education institutions through the creation of quality service policies; ensuring accessibility of higher education among different segments of the population through private investment, academic mobility for stimulation of the youth return, and affordable student housing; and providing quality competitive higher education in line with the EHEA requirements through institutional and international accreditation (National Recovery Council, 2022).

The 2022 Erasmus + National Office in Ukraine and the National Higher Education Reform Experts (HERE) team's review, which analysed national legislation, education policy, and the draft Ukraine Recovery Plan's Education and Science section in relation to EHEA documents and Bologna principles in 2022, generally acknowledges the alignment of the Recovery Plan with the European Education Area's priorities (Erasmus + National Office in Ukraine, 2022). Furthermore, the specific goals and tasks in the Recovery Plan indicate the potential for synchronization with the EHEA legislative framework. However, the Recovery Plan lacks attention to the crucial Erasmus + Programme and suffers from a lack of systematic approach, coherence between education levels, and logical connection between its components, with Strategic Steps lacking measurable outcomes, national projects in higher education being more infrastructure-focused rather than developing innovation, and strategic goals aligning with all education levels except for adult education and higher education.

The successful implementation of both the Strategy and Recovery Plan for Ukraine's higher education sector amidst ongoing war requires a detailed and coordinated operational plan supported by further significant legislative reform of the higher education system and engagement of all key stakeholders. The foundation of this should also rely on resilient state institutions, such as the Ministry of Education and Science of Ukraine, alongside the overall trust of the public in the reform agenda. In order to advance the new package of reforms, a new head of the MESU, Oksen Lisovyi, was appointed in March 2023 (Verkhovna Rada of Ukraine, 2023a).

Although the detailed plan of educational reforms by the new MESU team is still in progress, it is already becoming evident that the negative impact of the COVID-19 pandemic and the destructive influence of Russian armed aggression make it imperative for the government and

educational community to prioritize creating conditions for the transformation of the HEIs network, improving quality, and supporting an innovative environment to foster Ukraine's recovery (Osvita.UA, 2023). Post-war recovery in Ukraine and further integration with the European education space will require more proactive participation of universities in societal life and support of the economy and economic growth. This demands academic communities to become more open and accountable to society, ready to listen to its requests and needs. Any reforms are complex processes, especially during times of war. However, Ukraine now has a chance, more than ever before, to make a real breakthrough and irreversible turn towards the standards of the European education system.

The priority directions for restoring and reforming Ukraine's higher education system must undoubtedly reflect its alignment with the standards adopted by the European Union and the Bologna Process. This means moving towards granting students greater autonomy to make their learning paths more flexible and responsible, which will, in turn, positively influence excellence in learning and teaching. Greater flexibility will allow Ukrainian universities to offer more market-relevant educational products and become more attractive to students as places for higher education and competitive professions within Ukraine, rather than abroad. It is also evident that in the conditions of a war-torn state budget and the need for substantial investments in training highly demanded specialists for crucial reconstruction sectors, new approaches to state funding for education will be also required. This will also necessitate optimizing the network of higher education institutions, which currently do not match the concentration of school graduates and the student population, as well as consolidating university resources to transform them into more capable and efficient entities. Changes in university management and increasing the role of society in this process are also among the most demanded steps for Ukraine's future post-war recovery. Involving knowledgeable representatives from civil society, business, and the academic community in real governance or creating supervisory boards will help utilize their professional experience to advise university leadership teams and demand accountability and transparency in decision-making processes.

Therefore, the process of transforming the higher education system in Ukraine and enhancing its transformative capacities will remain highly relevant in the coming years, as long as Ukraine continues to withstand the consequences of destructive Russian aggression. Reforming the higher education system in Ukraine and maintaining its resilience through

further integration into the European education space cannot be overstated, given the country's status as a candidate for EU membership. At present, the process of reforming is ongoing without interruption. An indication of this is the recent gathering of the Verkhovna Rada Committee on Education, Science, and Innovation, which occurred on 5 May 2023. It included key stakeholders such as the Cabinet of Ministers, pertinent ministries, NAQA, NEO-Ukraine, and various academic and research institutions to discuss the further steps of Ukraine's integration into the European Union in the fields of education and science (Verkhovna Rada of Ukraine, 2023b). The focus of upcoming educational reforms in Ukraine's higher education sector anticipates: enacting laws on adult education; preparing draft laws on academic integrity, the national qualification system, and Ukraine's accession to the UNESCO Global Convention on the Recognition of Higher Education Qualifications; proposing changes to legislation regarding quality assurance in higher education and the development of individual educational trajectories in higher education. Among others, recommendations for MESU and NAQA to develop the higher education sector directed by the Committee include the preparation of guidelines for blended learning and distance learning, implementation of joint educational initiatives, increasing the use of English as a lingua franca, improving transparency and integrity in higher education institutions, and adoption of European quality standards for educational programmes (Personal communication with Nataliya Pipa, May 2023). The implementation of these steps as well as the comprehensive set of reforms announced by the Ministry of Education and Science for 2024 will become a relevant topic for research regarding the alignment of further reforms with the EHEA 2030 norms and principles that continue to remain the main "building blocks" for Ukraine's transformative resilient capacities in the aftermath of the war. That gives a hope that the entire higher education system will be equipped with the necessary tools to boost Ukraine's post-war recovery and secure the success of the EU accession negotiations in the education sector and its irreversible integration into EEA.

5 CONCLUSIONS

Ukraine's integration into the European Higher Education Area has been a central goal since the inception of the EU-Ukraine AA in 2014. Substantial strides have been made in aligning the country's higher

education sector with EHEA standards through comprehensive reforms, prioritizing legislative alignment, autonomy, quality enhancement, qualification recognition, and fostering mobility and internationalization. Despite challenges, Ukraine has made notable progress, fulfilling a significant portion of its obligations. The outbreak of the war brought about hardships for the higher education sector, leading to relocations, human capital losses, and disruptions. However, the resilience of the system was demonstrated through swift crisis management, aligning with European standards to minimize turbulence. The collaborative efforts of the EU, EHEA, and Ukraine have mitigated the detrimental impact of the war, preserving the transformative capacities of the educational system for long-term recovery. Moving forward, future challenges include addressing outflows of students and educators, institutional relocations, modernization, and more robust internationalization. The system's evolution depends on effectively addressing these challenges and implementing planned reforms, guided by the Rome Communiqué 2030 goals, the Strategy for higher education development, and Ukraine's recovery plan. Successful execution requires strong leadership from a newly appointed leadership team at the Ministry of Science and education of Ukraine. While the war continues to hit Ukraine's education infrastructure and educational communities, the significance of the Bologna process and the integration into the European Higher Education Area is undoubtedly acknowledged by all stakeholders within Ukraine as crucial components for the successful revitalization of the country's higher education system. These efforts not only contribute to the system's recovery but also lay a solid foundation for smooth negotiations aimed at Ukraine's integration into the European Education Area.

6 INTERVIEWS:

1. Interview with Mrs. Nataliya Pipa, Member of Verkhovna Rada of Ukraine, Secretary of Verkhovna Rada's Education, Science, and Innovations Committee (24th May 2023).
2. Interview with Olena Shapovalova, Director of Ukrainian State Center for International Education, Ministry of education and science of Ukraine (18th April 2023).

REFERENCES

- Agresto, J. (2007). *Mugged by reality: The liberation of Iraq and the failure of good intentions*. Encounter Books.
- Antoniuk, V. P. (2023). Perspective chapter: The war as a factor of upheavals and transformations in higher education: Experience of Ukraine. In *IntechOpen eBooks*. <https://doi.org/10.5772/intechopen.109688>
- Bologna Follow Up Group. (2022). *Statement on consequences of the Russian Federation invasion of Ukraine*. Bologna Process. <https://ehca.info/page-adoption-of-the-statement>
- Buckland, P. (2005). *Reshaping the future: Education and postconflict reconstruction*. World Bank.
- Cabinet of Ministers of Ukraine. (2017). *Decree "On the implementation of the Association Agreement between Ukraine and the European Union, the European Atomic Energy Community and their member states"* No 1106. <https://zakon.rada.gov.ua/laws/show/1106-2017-%D0%BF#Text>
- Cabinet of Ministers of Ukraine. (2022a). *Decree "On amending regulations of the Cabinet of Ministers of Ukraine as to governing academic mobility"*. No 599. <https://zakon.rada.gov.ua/laws/show/599-2022-%D0%BF#Text>
- Cabinet of the Ministers of Ukraine. (2022b). *Decree about the terminate the effect of all international agreement on education between Ukraine, Russian Federation, the Republic of Belarus*. Verhovna Rada of Ukraine. <https://zakon.rada.gov.ua/laws/show/355-2022-%D0%BF#Text>
- Council of the European Union. (2022a). Council Implementing Decision (EU) 2022/382 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection. *Official Journal of the European Union*, L71, 1–6.
- Council of the European Union. (2022b). Regulation (EU) 2022/562 of the European Parliament and of the Council of 6 April 2022 amending Regulations (EU) No 1303/2013 and (EU) No 223/2014 as regards Cohesion's Action for Refugees in Europe (CARE). *Official Journal of the European Union*, L 109/1.
- Dobko, T. (2022). *Combating Ukraine's brain drain (opinion)*. Inside Higher Ed. <https://www.insidehighered.com/views/2022/10/25/higher-ed-can-combat-ukrainian-brain-drain-opinion>
- Education in emergency. (2023). Retrieved May 12, 2023, from <https://save-schools.in.ua/en/>
- Erasmus+ National Office in Ukraine. (2020). *Bologna study Ukraine 2005–2020*. Retrieved March 10, 2023, from https://erasmusplus.org.ua/wp-content/uploads/2022/03/BolognaStudy_Ukraine2005_2020_NEO_eng1.pdf
- Erasmus+ National Office in Ukraine. (2022). *Monitor review analyzing national legislation, education policy, and the draft Ukraine Recovery Plan's Education*

- and Science section in the context of the EHEA documents and the Bologna principles.* Erasmusplus.org.ua. <https://erasmusplus.org.ua/en/news/neo-in-ukraine-and-review-of-national-legislation-and-educational-policy/>
- EU-Ukraine. (2014). Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part. *Official Journal of the European Union*, L 161/3, 29.5.2014, 3–2137.
- European Bank for Reconstruction and Development. (2023). *How the EBRD is tackling brain drain caused by Russia's war on Ukraine.* EBRD. <https://www.ebrd.com/news/2023/how-the-ebrd-is-tackling-brain-drain-caused-by-russias-war-on-ukraine.html>
- European Commission. (2022a). Communication from the Commission to the European Parliament, the European Council and the Council: Commission Opinion on Ukraine's application for membership of the European Union. COM(2022) 407 final. Brussels. <https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-06/Ukraine%20Opinion%20and%20Annex.pdf>
- European Commission. (2022b). *EU agrees fifth package of restrictive measures against Russia.* Brussels. IP/22/2332. https://ec.europa.eu/commission/presscorner/detail/en/ip_22_2332
- European Commission. (2022c). Specific guidance for implementation of the programmes. Ref.Ares(2022)2500812. https://monprojet.erasmusplus.fr/docs/documents/20220804_annex_ukraine_guidance_for_implementation_153.pdf
- European Commission. (2022d). *European Education and Culture Executive Agency. Supporting refugee learners from Ukraine in higher education in Europe.* Publications Office of the European Union. <https://data.europa.eu/doi/https://doi.org/10.2797/022188>
- European Commission. (2022e). Commission Recommendation (EU) 2022/554 of 5 April 2022 on the recognition of qualifications for people fleeing Russia's invasion of Ukraine. *Official Journal of the European Union*, L 107 I/1.
- European Commission. (2023a). Analytical Report following the Communication from the Commission to the European Parliament, the European Council and the Council Commission Opinion on Ukraine's application for membership of the European Union. SWD(2023), 30 final. Brussels. https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-02/SWD_2023_30_Ukraine.pdf
- European Commission. (2023b). *Comparison report of European Qualifications Framework and Ukrainian National Qualifications Framework. Employment, Social Affairs & Inclusion - European Commission.* Luxembourg: Publications Office of the European Union. <https://doi.org/10.2767/442635>
- European Commission. (2023c). *Erasmus+ 2023 Annual Work Programme: Commission increases annual budget, with a focus on learners and staff from*

- Ukraine*. https://neighbourhood-enlargement.ec.europa.eu/news/erasmus-2023-annual-work-programme-commission-increases-annual-budget-focus-leaders-and-staff-2023-03-09_en
- European Union. (2012). Consolidated version of the Treaty on the European Union. *Official Journal of the European Union* C 326/13 of 26.10.2012. https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF
- European University Association. (2022). *Briefing on impact of the Russian Federation's invasion of Ukraine on the Ukrainian higher education sector*. European University Association, Brussels. https://eua.eu/downloads/publications/briefing_impact%20of%20the%20russian%20federation%20invasion%20of%20ukraine%20on%20the%20ukrainian%20higher%20education%20sector.pdf
- Global Coalition to Protect Education from Attack (GCPEA). (2022). *Education Under Attack 2022*. Retrieved March 20th, 2023 from https://protectededucation.org/wp-content/uploads/eua_2022.pdf
- Government Office for Coordination on European and Euro-Atlantic Integration. (2022). *Education*. Eurointegration portal. <https://eu-ua.kmu.gov.ua/en/integration/>
- Government Office for Coordination on European and Euro-Atlantic Integration. (2023). Report on implementation of the EU-Ukraine Association Agreement in 2022. https://www.kmu.gov.ua/storage/app/sites/1/55-GOEEI/report_2022_.pdf
- Heleta, S. (2015). *Higher education in post-conflict societies: settings, challenges and priorities*. *Internationalisation of higher education handbook*, 1, (pp. 2–16). Raabe Academic Publishers: Berlin.
- Himmelfarb, A. (2023). *Ukraine rapid damage and needs assessment, February 2022-February 2023*. World Bank Document. <https://documents1.worldbank.org/curated/en/099184503212328877/pdf/P1801740d1177f03c0ab180057556615497.pdf>
- International Organization for Migration. (2023) *DTM Ukraine — Internal Displacement Report — General Population Survey Round 13*. <https://dtm.iom.int/reports/ukraine-internal-displacement-report-general-population-survey-round-13-11-may-14-june-2023>
- Kahanec, M., Leu-Severynenko, S., Novosad, A., & Stadnyi, Y. (2022). Education reforms during and after the war. In Y. Gorodnichenko, I. Sologub, & B. Weder di Mauro (Eds.), *Rebuilding Ukraine: Principles and policies* (pp. 323–361). Centre for Economic Policy Research.
- King, E., Suryadarma, D., Kaffenberg, M., Dohmen, D. & Sonobe, T. (2022). *Building resilient education to mitigate the adverse effects of COVID-19 and future disruptions of learning: policy brief*. Think7. <https://www.think7.org/publication/building-resilient-education-systems-to-mitigate-the-adverse-effects-of-covid-19-and-future-disruptions-of-learning/>

- Kvit, S. (2020). Higher education in Ukraine in the time of independence: Between Brownian motion and revolutionary reform. *Kyiv-Mohyla Humanities Journal*, 7, 141–159. <https://doi.org/10.18523/kmhj219666.2020-7.141-159>
- Kvit S. (2022). Annual report of the National Agency for Quality Assurance of higher education 2021. *National Agency for Quality Assurance*. Retrieved March 20th, 2023 from <https://osvita.ua/doc/files/news/858/85814/Zvit-2021.pdf>
- Lantero, L., Spitalieri, L., Dyrvonskyte, L., Ferranti, L., Suprun, K., Krasnoshok, V., Vanina, T., & Makarevych, Ye. (2022). *Guidelines on fast-track recognition of Ukrainian academic qualifications*. European Commission. <https://education.ec.europa.eu/document/guidelines-on-fast-track-recognition-of-ukrainian-academic-qualifications>
- Law of Ukraine on higher education. No. 1556-VII (2014, July 1). Retrieved March 5th, 2023 from <https://zakon.rada.gov.ua/laws/show/1556-18?lang=en#Text>
- Lukanska, A. (2023). In order to retain foreign students, universities are developing academic mobility and double degree programmes. *The Voice of Ukraine*. http://www.golos.com.ua/article/370733?fbclid=IwAR1Om8e0pk7MWnuHjixMRfhIC4Z5-YqT0XDHF0-RA2PE_PVG4hmHpaDS4XI
- Lazarenko, V. & Rabinovych, M. (2025). Collective protection for Ukrainians in the EU: Laws, practices and implications for EU and Ukrainian policies. In M. Rabinovych & A. Pintsch (Eds.) *Ukraine's thorny path to the EU: From "integration without membership" to "integration through war"*. Palgrave Macmillan.
- Marchuk, A. (2023). *Якість вищої освіти в надзвичайних умовах: освітні втрати й дисфункції цифровізації вищої освіти та дистанційного навчання* [The quality of higher education is extraordinary conditions: educational losses and dysfunctions. Digitalization of higher education and distance education]. *Socio-Economic Relations in the Digital Society*, 1(47), 80–89. <https://doi.org/10.55643/ser.1.47.2023.482>
- Milton, S., & Barakat, S. (2016). Higher education as the catalyst of recovery in conflict-affected societies. *Globalisation, Societies and Education*, 14(3), 403–421. <https://doi.org/10.1080/14767724.2015.1127749>
- Ministry of Education and Science of Ukraine. (2020). 49 countries of the Bologna process approved the Rome ministerial communique: priorities of the European higher education area for the next 10 years are defined. Mon.gov.ua. <https://mon.gov.ua/ua/news/49-krayin-bolonskogo-procesu-shvalili-rimske-ministerske-komyunike-viznachenno-prioriteti-yevropejskogo-prostoru-vishoyi-osviti-na-nastupni-10-rokiv>

- Ministry of Education and Science of Ukraine. (2022a). Decree No. 229 on establishing the Situation Centre. <https://mon.gov.ua/ua/npa/pro-utvore-nya-situacijno-centru-mon>
- Ministry of Education and Science of Ukraine. (2022b). Decree “On the organization of vocational, pre-university, and higher education institutions during martial law.” No. 235. <https://zakon.rada.gov.ua/rada/show/v0235729-22#Text>
- Ministry of Education and Science of Ukraine. (2022c). All educational institutions are recommended to suspend the educational process and declare a two-week break. <https://mon.gov.ua/ua/news/sergij-shkarlet-vsime-zakladam-osviti-rekomendovano-priviniti-osvitnij-proces-ta-ogolositi-kanikuli-na-dva-tizhni>
- Ministry of Education and Science of Ukraine. (2022d). Concept Plan on the functioning of the education system, research and innovation sector of Ukraine during martial law and further reconstruction period related to Russian aggression. <https://ukrainet.eu/wp-content/uploads/2022/03/MOH-EDU-RI-Emergency-Concept-Plan-v.2.0-ENG.pdf>
- Ministry of Education and Science of Ukraine. (2022e). Decree No. 130 “On the procedure for recognition of learning outcomes obtained through non-formal and/or informal education in the formal education system”. <https://mon.gov.ua/ua/npa/pro-zatverdzhennya-poryadku-viznannya-u-vis-hij-ta-fahovij-peredvishij-osviti-rezultativ-navchannya-zdobutih-shlyahom-noformalnoyi-taabo-informalnoyi-osviti>
- Ministry of Education and Science of Ukraine. (2022f). Strategy for the development of higher education in Ukraine 2022–2032. <https://mon.gov.ua/ua/news/opublikovano-strategiyu-rozvitku-vishoyi-osviti-v-ukrayini-na-2022-2032-roki>
- Ministry of Finance of Ukraine. (2023). Budget expenditures “On education”. <https://mof.gov.ua/uk/the-reform-of-education>
- National Recovery Council. (2022). *Ukraine’s National Recovery Plan*. https://uploads-ssl.webflow.com/621f88db25fbf24758792dd8/62c166751fcf41105380a733_NRC%20Ukraine%27s%20Recovery%20Plan%20blueprint_ENG.pdf
- Neufeld, K., & Neufeld, K. (2022). *Cost to Ukraine of conflict with Russia - CEBR*. Leading economic forecasts and analysis. <https://cebr.com/reports/cost-to-ukraine-of-conflict-with-russia/>
- Nikolayev, Y., Rii H., & Shemelynets I. (2022, July 12). *In alien walls: How displaced universities overcome problems*. Vox Ukraine. Retrieved March 30th, 2023 from <https://nawa.gov.pl/en/nawa/news/solidarity-with-ukraine-polish-universities-associated-in-alliances-of-european-universities-to-help-ukrainian-heis>, <https://voxukraine.org/u-chuzhyh-stinah-yak-dolayut-problemy-per-emishheni-universityty/>

- Osadcha, Y. (2022) “Teachers will have to tighten their belts”: the 2023 education budget was reduced by 20%. *Ukrainian Pravda*. <https://life.pravda.com.ua/society/2022/11/6/251141/>
- Osadcha, Y. (2023). More than a third of displaced individuals from Ukraine intend to stay in EU countries - according to the survey. *Ukrainian Pravda*. <https://life.pravda.com.ua/society/2023/05/16/254309/>
- Osvita.UA. (2023). *The Ministry of Education and Science will implement reforms to rescue higher education*. <https://osvita.ua/vnz/88747/>
- Polish National Agency for Academic Exchange. (2023). “Solidarity with Ukraine” – Polish universities associated in alliances of European Universities to help Ukrainian HEIs. NAWA. <https://nawa.gov.pl/en/nawa/news/solidarity-with-ukraine-polish-universities-associated-in-alliances-of-european-universities-to-help-ukrainian-heis>
- President of Ukraine. (2022). *Decree of the President of Ukraine on the introduction of martial law in Ukraine*. No. 64/2022. <https://www.president.gov.ua/documents/642022-41397>
- Reyes, J. (2013). *What matters most for educational resilience: A framework paper*. World Bank.
- Ritesh, S. (2019). *Transforming systems in times of adversity: Education and resilience White Paper*. USAID. Education Links. <https://www.edu-links.org/resources/transforming-systems-times-adversity-education-and-resilience-white-paper>
- Shkarlet, S., Vitrenko, A., Rogova, V., Kostiuchenko, S., Danilenko, S., Shkuratov, O., Zakharin, S., Pyzhov, O., Zavgorodniy, D., Yeresko, O., Shumik, I., Taranov, I., Kashpersky, V., Suprun, K., Baluba, I., Rybalko, A., Husak, O., Sofienko, A., & Shvadchak R. (2022). *Education in Ukraine in times of war: an informational-analytical collection*. Institute of Educational Initiatives. Kyiv. https://iea.gov.ua/wp-content/uploads/2022/08/education-of-ukraine_2022.pdf
- Shytikova, S. (2021) *Participation of Ukrainian organisations in the EU-funded programme Erasmus+ 2014–2020*. National Erasmus+ Office in Ukraine. https://erasmusplus.org.ua/wp-content/uploads/2022/08/ukraine-under-erasmus_december_1_1_2021.pdf
- Shytikova, S. (2022). *Erasmus+ and the new academic year in Ukraine*. European Association for International Education. <https://www.eaie.org/blog/erasmus-ukraine-academic-year.html>
- State Statistics Service of Ukraine. (2021). Higher and vocational education in Ukraine in 2021. <https://www.ukrstat.gov.ua/>
- Ukraine Education Cluster. (2022). *Ukraine higher education needs assessment (25 June – 25 October 2022)*. Government of Ukraine, Ministry of Education and Science, World Bank. <https://reliefweb.int/report/ukraine/ukraine-higher-education-needs-assessment-25-june-25-october-2022>.

- Ukrainian Global University. (2022). *World's best educational opportunities to rebuild Ukraine*. KSE. <https://uglobal.university/ukrainian-global-university/>
- UN High Commissioner for Refugees (UNHCR) Operational Data Portal. (2024). *Ukraine refugee situation*. Retrieved March 31, 2024 from <https://data.unhcr.org/en/situations/ukraine>.
- UNESCO. (2011). *The hidden crisis: Armed conflict and education: EFA Global Monitoring Report*. Retrieved March 5, 2023 from <https://news.harvard.edu/wp-content/uploads/2016/02/190743e.pdf>
- UNICEF Education Section. (2019). *Risk-informed education programming for resilience guidance note*. New York: UNICEF. <https://www.unicef.org/media/65436/file/Risk-informed%20education%20programming%20for%20resilience:%20Guidance%20note.pdf>
- uniRank. (2023). *Universities and higher education in Europe*. Retrieved May 23, 2023 from <https://www.4icu.org/Europe/#:~:text=European%20Universities%20World%20Representation&text=Considering%20that%20the%20uniRank%20database,Universities%20World%20Representation%20Index%3A%2019.6%25>
- Verkhovna Rada of Ukraine. (2015). *Law of Ukraine "On the Legal Regime of Martial Law"*. No. 389-VIII. <https://zakon.rada.gov.ua/laws/show/389-19#Text>
- Verkhovna Rada of Ukraine. (2017). *Law of Ukraine "On Education"*. No. 2145-VIII <https://zakon.rada.gov.ua/laws/show/2145-19/page#Text>
- Verkhovna Rada of Ukraine. (2023a). *Ordeal "About the appointment of Oleksandr V. Lysyoyi as the Minister of Education and Science of Ukraine"*. <https://zakon.rada.gov.ua/laws/show/2988-IX#Text>
- Verkhovna Rada of Ukraine. (2023b). *Agenda meeting of the Committee of the Verkhovna Rada of Ukraine on issues of education, science and innovation*. <https://kno.rada.gov.ua/documents/zasid/76125.html>
- World Bank. (2013). Education resilience research training in South Asia: A transformative and capacity building agenda. *Education resilience approaches*, 5. http://wbfiles.worldbank.org/documents/hdn/ed/saber/supporting_doc/CountryReports/EDR/SABER_Education_Resilience_South_Asia_region_1.pdf
- World Bank. (2022a). Safe and learning in the midst of fragility, conflict, and violence. *A World Bank Group Approach Paper*. <http://documents.worldbank.org/curated/en/987751647358730492/Safe-and-Learning-in-the-Midst-of-Fragility-Conflict-and-Violence-A-World-Bank-Group-Approach-Paper>
- World Bank. (2022b). *Ukraine: Education - impact of the war in Ukraine*. Ukraine sectorial briefs. <https://documents1.worldbank.org/curated/en/099945306202211104/pdf/P1775870809f1d04d0844c0e7042abf0eb5.pdf>

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From “Integration without Membership” to “Integration through War”—Or Why Sailing the Thorny Path Will Ultimately Lead to the EU

Anne Pintsch and Maryna Rabinovych

Among sailors, the “Thorny Path” has been known for centuries as the infamous route from Florida to Saint Martin in the Caribbean. The trade winds from the east on this island-hopping tour are relentless. The journey is a constant battle against the wind, the waves, and the current. It was on this route that Christopher Columbus in 1492 lost his flagship Santa Maria (Swanson, n.d.).

Ukraine has been hit by severe storms, too, on its Thorny Path to the European Union (EU), which it started to travel in the early 1990s, soon after gaining independence (see the contribution by Shyrokykh, Busol & Koval 2025). Where is the country on this path today? (How) can Ukraine make progress on the Thorny Path through reforms in times of war? And can the Association Agreement (AA) still serve as a map

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and tool on the country's journey to the EU? This concluding chapter summarises the main findings from the contributions along these three questions. In doing so, it also provides recommendations to policymakers.

I UKRAINE'S INTEGRATION INTO THE EU

Experienced sailors report that the most troublesome part of the Thorny Path is neither the beginning nor the home stretch, but a section in between, along the north coast of the Dominican Republic (Swanson, n.d.). Ukraine, which has been under Russian fire since 2014 and has been resisting Russia's full-blown war since 2022, is currently in the most difficult phase of its path to the EU. However, despite the unimaginable losses and hardships that the war has brought to the Ukrainian people, Ukraine is becoming increasingly integrated into the EU.

Taking a broad perspective at Ukraine's European integration in economic, political, cultural, and military terms, Christian Freudlsperger and Frank Schimmelfennig (2025) find that EU-Ukrainian boundaries have gradually opened after the 2014 Russian attack, and this opening has accelerated as a response to the 2022 full-scale invasion. Thus, they conclude that "Ukraine has moved increasingly to an insider position in the EU polity". However, Ukraine's progress has been uneven across the different areas. While, for example, the entry into force of the EU-Ukraine visa liberalisation agreement in 2017 led to more open political and cultural EU boundaries for Ukrainian citizens, the military boundary remained untouched and mostly closed until 2022. As Peter Van Elsuwege (2025) points out, however, this opening of the border was carried out with a reinsurance in the form of a strengthened suspension mechanism.

Freudlsperger and Schimmelfennig find an increasing integration of Ukraine not only in legal terms, i.e., in terms of the relevant primary, secondary, and tertiary EU legislation but also in terms of growing economic, political, and cultural transactions. They provide the example that within less than ten years, the EU replaced Russia as Ukraine's most important trading partner. The full-scale invasion reinforced the trend, now also including the military sphere. Among others, the EU integrated Ukraine's electricity grids, let Ukraine join its Civil Protection Mechanism and activated the Temporary Protection Directive to give refuge to Ukrainians who have fled the war.

The latter is studied in more detail by Valeria Lazarenko and Maryna Rabinovych (2025). Zooming in on the level of selected member states, the authors show large differences in the implementation of the Directive. Their chapter thus refers to the nature of the Directive as a lowest common denominator between the member states and the limits of the EU’s ability to ensure equal rights and an equal level of integration for Ukrainians across the Union. The chapter also problematises the time limit of the measure. The latter raises more general questions related to Ukraine’s European integration. What will be the status of forcibly displaced Ukrainians after the Directive’s expiration on 4 March 2025? And how will this new status be connected to the free movement of persons, which forms part of the accession negotiations? Referring to the most recent rounds of EU enlargements, Van Elsuwege (2025) underlines the member states’ traditional reluctance to offer free movement rights immediately, which resulted in transitional arrangements and safeguard clauses. However, the situation in the labour markets has changed since then. While Germany was one of the countries most concerned about immigration after the 2004 enlargement, Ukrainian refugees are now helping to alleviate the shortage of skilled workers in the country (Bug, 2011; Der Spiegel, 2023).

The situation that millions of citizens of a candidate country are already based in the EU, many of them with no intention to return to Ukraine even when the war is over, is unprecedented. Lazarenko and Rabinovych argue in favour of an EU-level coordinated response after the end of the Temporary Protection Directive, avoiding further divergence between the member states that may incentivise secondary migration or unwilful returns to Ukraine. They recommend that the EU, its member states, and Ukraine work closely together to develop a “double intent” system for the integration of Ukrainians in the EU that provides for both their integration in the host countries and their voluntary reintegration in Ukraine. This system should be designed as an intermediate step on the way to the free movement of workers that would accompany Ukraine’s subsequent accession.

In her chapter on EU-Ukraine trade relations, Nataliya Haletska zooms in on the aspect of economic transactions. Adding to the findings by Freudlsperger and Schimmelfennig (2025), she presents three types of EU-Ukraine joint measures that have an impact on Ukraine’s European integration: 1.) those that would have been taken even without the full-scale invasion, 2.) those that were taken as a response to the invasion, and

3.) those that were stopped or considerably delayed. While the measures of the first and second type, such as the amendment of the Association Agreement with regard to customs legislation or the Agreement between the European Union and Ukraine on the Carriage of Freight by Road (Road Agreement) increased EU-Ukraine transactions, they can only partially solve existing problems. As the Road Agreement is a temporary measure, it does not provide the legal certainty that Ukrainian producers would need to increase their production. It thus has a limited effect. The third case is even more problematic, as the war has prevented long-awaited changes to promote trade liberalisation. Haletska illustrates it with the Agreement on Conformity Assessment and Acceptance of Industrial Products (ACAA), which would introduce free movement of goods in industrial products and benefit Ukrainian businesses (see also Van Elsuwege, 2025).

In addition to the bilateral measures, the war prompted the EU to introduce unilateral regulatory changes, such as Regulation 2022/870 on temporary trade-liberalisation measures. However, the EU soon had to make use of the safeguard mechanism as a response to unilateral restrictions adopted by Bulgaria, Hungary, Poland, Romania, and Slovakia (see also Freudlsperger & Schimmelfennig, 2025). As Haletska argues, this step has no clear economic reasons but rather shows the tensions between the member states and the EU institutions. The protests by farmers and the reintroduction of unilateral import bans on certain agricultural products from Ukraine by Poland, Hungary, and the Slovak Republic highlight the difficulties involved in the further liberalisation of trade in agricultural products and the future EU-Ukraine accession negotiations on the Common Agricultural Policy (Haletska, 2025; Van Elsuwege, 2025). They illustrate that the decrease in boundary closure may be heavily contested. As Van Elsuwege (2025) argues, Ukraine's integration into this policy needs to be carefully prepared and presupposes structural reforms. Based on the experience with the accession of the Central and East European countries, he suggests that Ukraine (and the other new candidate countries) be included in the Instrument for Pre-accession Assistance for Rural Development (IPARD).

The chapters on the protection of Ukrainian refugees and EU-Ukraine trade relations also point to another potential obstacle to the smooth integration of Ukraine, namely the multi-level nature of the EU. While Lazarenko and Rabinovych point out the different protection practices beyond a common minimum standard in the member states, Haletska

criticises the contradictions between the trade-related measures adopted at different levels. She mentions the problem of the insufficient number and staffing of border checkpoints, an issue that is regulated on a bilateral level between Ukraine and the respective EU member states and not by the EU institutions.

The latter point is related to an observation by Rilka Dragneva and Kataryna Wolczuk (2025) on the physical foundations of integration. In order to use the legal provisions adopted to promote Ukraine's European integration and increase transactions, the necessary material conditions must be (re-)constructed during and after the war: "Ukraine's ongoing economic and trade integration with the EU is premised on creating the necessary infrastructure. This ranges from transportation hubs, energy-related such as new high-voltage lines to the cyber-security of Ukraine's energy infrastructure".

Halyna Protsyk's (2025) chapter provides an insight into the acceleration of the European integration of the Ukrainian higher education sector during the war. Increased institutional cooperation between Ukrainian and European universities and organisations is a direct response to the extensive damage to Ukraine's higher education infrastructure and the need for support. In many cases, this cooperation was made possible through EU initiatives such as the Erasmus + Capacity Building in Higher Education programme and Jean Monnet projects.

While most chapters that address the current state and prospects of Ukraine's European integration look at measures taken by officials at various levels in Ukraine and the EU, Kostiantyn Fedorenko turns his attention to the Ukrainian citizens and the potential risk of an emerging Euroscepticism in the country. He warns against taking the currently very high approval ratings for Ukraine's accession to the EU for granted in the future. The first reason is that the outcome of the war will have a direct impact on the composition and attitudes of the electorate. Secondly, the path to European integration will require various reforms that may be unpopular with the voters. Thirdly, part of the Ukrainian electorate is quite critical and suspicious of today's West, especially France and Germany. And finally, voters may become disillusioned with the promises of prosperity that they associate with European integration, but which will take time to materialise. Thus, in order to prevent the emergence of Eurosceptic attitudes, the integration process must not slacken, membership must remain a credible promise and the EU and its member states must engage visibly and effectively in Ukraine's rebuilding.

Overall the contributions support the conclusion by Freudlsperger and Schimmelfennig (2024) that Russia’s attempt “to radically change the post-Cold War European order and to stop, and possibly roll back militarily, the expansion of Western regional integration in Eastern Europe” has been unsuccessful with a view to Ukraine’s path to the EU. On the contrary, despite the hardships and destructions in Ukraine, the war has accelerated the country’s European integration in crucial dimensions. However, the contributions also point to current and future challenges, such as conflict-ridden accession negotiations and increasing Euroscepticism, which could be a serious headwind on the road to membership.

2 REFORMS AS THE DRIVING FORCE OF UKRAINE’S EUROPEAN INTEGRATION

Sailing the Thorny Path presupposes a ship that has the capacity to weather the storm. It is thus no surprise that there was hardly any traffic on this unforgiving route before the age of steam (Van Sant, 2012, i).

Ukraine’s progress on its Thorny Path to the EU has always been directly linked to the implementation of reforms as a driving force (Shyrokykh et al., 2025). With regard to the Association Agreement, Van Elsuwege (2025) refers to the preamble, in which the political association and economic integration of Ukraine is expressly made dependent on progress in the implementation of the Agreement, respect for common values and convergence with the EU in political, economic, and legal areas.

As Dragneva and Wolczuk (2025) underline, the most important mechanism provided for in the Association Agreement and the related Deep and Comprehensive Free Trade Agreement (DCFTA) to remove non-tariff barriers to trade is the adoption of the EU *acquis*: “legal approximation is the bedrock of the AA/DCFTA”. The obligations to harmonise legislation are most extensive in the chapters that regulate the anticipated access to the internal market. As the authors summarise, “domestic reform is treated as a precondition for integration”. However, the adoption of EU law underpins not only the DCFTA but also EU-Ukraine economic and sectoral cooperation in areas such as transport, science, and the environment.

As an EU candidate country, Ukraine is obliged to adopt the entire EU *acquis*, including the fundamental values mentioned in Article 2 of the Treaty on European Union (Shyrokykh et al., 2025). Van Elsuwege

argues that the AA’s *quid pro quo* approach also perfectly fits within the new context of Ukraine’s EU candidate status, because “[c]onditionality and progress on the basis of a candidate’s own merits towards meeting the pre-accession criteria is one of the core elements of the EU’s enlargement policy”. One could doubt, however, whether this is still fully valid in the era of “geopolitical enlargement”, i.e., a situation in which “the EU seeks to integrate and protect candidates to defend its international order and to deny its geopolitical rivals territorial and political gains” (Freudlsperger & Schimmelfennig, 2025).

Even if the merit-based approach remains (partially) in place, Dragneva and Wolczuk identify several potential problems with it. The EU *acquis* is not a ready-made template and not as clear as one might think. It is also a moving target as it is constantly being developed through new EU legislation (see also Oprysk, 2025). Both problems are exacerbated by the lack of capacity and experience of the Ukrainian authorities. Over the years, the assumption that Ukraine was a “sail-ready but empty vessel” (Dragneva & Wolczuk, 2025) has proven to be incorrect. As the EU recognised this, it started to provide substantial assistance to enhance Ukraine’s state capacity and to promote fundamental reforms of the public administration and the judiciary. This has not only helped Ukraine to implement EU law but has also strengthened Ukraine’s resilience against Russian aggression. Such assistance will be necessary in the future, too. Dragneva and Wolczuk suggest considering Ukraine’s reconstruction as a flanking measure based on a separate legal document, including a coordination mechanism and implementation procedure.

Various contributions testify that Ukraine is implementing reforms under the condition of war. Karina Shyrokykh, Kateryna Busol, and Dmytro Koval show how previously delayed reforms related to the areas of justice, anti-corruption, and gender equality have even accelerated since Russia’s invasion, which in turn has boosted Ukraine’s further European integration. Two mechanisms drive this development. On the one hand, the war has strengthened the influence of the EU as the only remaining integration alternative and, as a result, changed the cost–benefit calculations of the domestic elites. This also includes the elites realising that the reconstruction of Ukraine will depend on extensive public and private support. To ensure this, Ukraine must improve its compliance with law enforcement and property rights and strengthen the judiciary (see also Oprysk, 2025). On the other hand, practical requirements related to the

investigation of a large number of war crimes and the protection of victims have led to reforms in the area of justice and gender equality policy.

Instrumental cost–benefit calculations are also driving Ukraine’s slow but steady efforts to comply with the environmental regulations contained in the Association Agreement. As Karina Shyrokykh and Olga Melen-Zabramna show, a number of reforms have been undertaken in this notoriously neglected policy field during the war, not least with the aim to promote Ukraine’s European integration. However, the authors also identify a second compliance mechanism, which is related to the war and Ukraine’s uncertain future prospects. This mechanism of “anticipatory compliance” helps explain why Ukraine adopts provisions of the EU’s Green Deal (EGD) even if the country strictly speaking is not obliged to do this. Given the massive destruction and resulting reconstruction needs, Ukraine has adopted a “forward-looking approach to compliance” (Shyrokykh & Melen-Zabramna, 2025). As both the European Commission and Ukraine are planning the reconstruction based on the EGD principles, Ukraine has already started to prepare by intensifying the alignment with the EGD provisions, which originally started in 2021.

Both chapters drastically illustrate a perception of European integration and the need for reforms as most fundamental issues for Ukraine’s existence. As Shyrokykh et al., (2025) succinctly summarise: “European integration in the context of the war is more than just about economic development; it is also a matter of state survival”. This perception is also reflected in the chapter by Halyna Protsyk (2025), who concludes that Ukraine’s alignment with the European Higher Education Area (EHEA) and the Bologna process, as provided for in the AA, significantly enhanced the resilience of the Ukrainian higher education system and formed the core of its transformative capabilities amidst the war.

Another area where legal reforms go beyond the obligations included in the AA is intellectual property (IP) rights. Liliia Oprysk presents the new Ukrainian Copyright Act adopted in December 2022 and replacing the Copyright Act of 1993 as another example of accelerated reform under the war. In line with other chapters, she identifies the war-related pressure to progress with European integration as a motive for this reform. Similar to other contributions, she emphasises the importance of the reform for creating an attractive investment environment in Ukraine, which will be crucial for the country’s reconstruction. However, she identifies ideological recovery as an additional driver of the reform and argues that “the recent reforms ought to be viewed in terms of recovery

from the legacy of the second half of the twentieth century” (Oprysk, 2025). In this sense, legal approximation means much more than a technocratic exercise but is closely linked to the defence of the values of Ukrainian society. This does not imply that there are no deficiencies in this field. To the contrary, implementation must still be improved. At the same time, Oprysk points to the changed role of civil society that has matured after the Revolution of Dignity and the onset of the full-scale invasion and is less willing to tolerate disrespect for the rule of law and fundamental freedoms. This effect could even be exacerbated by the return of Ukrainian refugees, millions of whom are experiencing far more consistent enforcement of copyright law in the EU host countries.

The role of civil society is also stressed by Yelyzaveta Aleksyeyeva and Anne Pintsch. With Environmental Impact Assessment (EIA), the authors present a case in which EU legislation was transposed into Ukrainian law before the full-scale invasion. However, because of the war, the democratic rights of transparency and public participation guaranteed by the EIA process have been severely—and as the authors argue, inappropriately—restricted. The adopted restricting measures resulted in a major domestic and international reaction. After a rigorous campaign launched by Ukrainian environmental NGOs both within the country and in international fora, the Ministry of Environment initiated a legislative process to revise the law. Environmental NGOs took part in the drafting of the amendments that were finally adopted by the parliament. The case confirms that the “sandwich strategy” that had been applied previously to advance reforms in Ukraine (Nitsova et al., 2018) is still relevant.

Overall, the chapters show that reforms have not only continued during the war but have in many cases even accelerated. Several dynamics characterise this development. The war and Ukraine’s status as EU accession candidate country have changed the elite’s cost–benefit calculations. This relates to both immediate compliance considerations, based on EU conditionality, and more long-term considerations about Ukraine’s reconstruction. At the same time, the war has created necessities that require new approaches and has placed the reforms in a broader picture of recovery from the Soviet past. Civil society remains an important part in the reform process, and it can be expected that the return of forcibly displaced Ukrainians from abroad will exacerbate this role. The EU host countries should consider approaching this issue more strategically.

3 THE ASSOCIATION AGREEMENT—STILL THE RIGHT MAP TO USE ON THE PATH TO MEMBERSHIP?

Sailors who against all odds travel the Thorny Path are often guided by a book that promises a safe, “thornless” passage and is sometimes called “the bible” (Van Sant, 2012). Can the plan that Ukraine has in the form of the Association Agreement continue to be a valid guide to follow on its Thorny Path to EU membership? After all, as Dragneva and Wolczuk point out, the AA initially created a particular “membership-deflecting association” (2025).

Almost all the contributions in this volume stress the importance of the Association Agreement for the progress of reforms. Van Elsuwege goes even further and finds that nothing prevents the AA from playing “a crucial role in Ukraine’s path to membership in the future” (2025). Among others, he refers to the experience with the European Agreements concluded with Poland, Hungary, and Czechoslovakia as an alternative to membership before the 1993 Copenhagen European Council. While this experience could serve as a precedent, also the AA’s own qualities make it a suitable tool for the accession process. As Van Elsuwege argues, the broad and open-ended formulation of its objectives allow for the instrument’s easy adaptation to the new circumstances. Also, the AA has very early been characterised as “integration-oriented”, implying that the included principles, concepts, and provisions of EU law should be interpreted and applied as if Ukraine was an EU member. However, Van Elsuwege also acknowledges that some challenges remain, because the AA does not cover the entire *acquis*. Thanks to the flexible nature and strong institutional settings, these challenges can be tackled though, and the AA can become a point of reference for the still outstanding measures.

Haletska supports this understanding of the AA as an important tool for Ukraine’s further integration process and argues in favour of a comprehensive update. In contrast to the adoption of unilateral measures outside the AA, this would be “the most efficient means to ensure further bilateral and permanent EU-Ukraine trade liberalization” (2025). The change to the AA concerning legislation approximation in the field of customs in October 2022 shows that such updates are also possible under the conditions of the war.

Eventually, however, the strengths of the AA need to be combined with other instruments. As Dragneva and Wolczuk (2025) remind us, the AA was ambitious and yet insufficient as a modernisation tool. The lesson

learned is that it takes more than the AA and mere legal approximation to ensure Ukraine's progress on its Thorny Path to the EU.

4 WHY SAILING THE THORNY PATH WILL ULTIMATELY LEAD TO THE EU

In conclusion, the contributions show that Ukraine has never been more integrated into the EU than today. Its integration has even accelerated with the onset of Russia's full-scale invasion. This is not least due to the rapid pace of reforms guided by the obligations stemming from the AA and strategic considerations. Some current and potential future challenges remain, such as the weak state capacity and the danger of rising Euroscepticism. The volume has also not considered in detail the potential challenges related to necessary reforms of the EU. However, the former protests mentioned in several contributions provide a taste of the conflicts that can be expected in other areas, too.

Nevertheless, we close this volume with an optimistic outlook. Sailors who have bravely mastered the Thorny Path and have finally reached Saint-Martin have actually entered EU territory.¹

REFERENCES

- Bug, A. (2011). *Arbeitnehmerfreizügigkeit nach der Osterweiterung der Europäischen Union. Chancen und Risiken für den Arbeitsmarkt [Free movement of workers after the Eastern enlargement of the European Union. Opportunities and risks for the labour market]*. Deutscher Bundestag. Infobrief WD 6 – 3010 – 001/11. https://www.bundestag.de/resource/blob/191742/2fe22b0fca7cbd5342713e4bb0a608b1/arbeitnehmerfreizuegigkeit_nach_der_osterweiterung.pdf
- Der Spiegel. (2023). *Ukrainerinnen und Ukrainer dämpfen deutschen Fachkräftemangel*. <https://www.spiegel.de/wirtschaft/soziales/ukrainerinnen-und-ukrainer-daempfen-deutschen-fachkraeftemangel-86000-haben-schon-einen-job-a-7bc5fc95-289f-4262-a389-dc4ba9c34db4>

¹ Saint-Martin (France) is one of the nine EU outermost regions and integral part of the Union. https://ec.europa.eu/regional_policy/policy/themes/outermost-regions_en.

- Dragneva, R., & Wolczuk, K. (2025). Integration and modernisation: EU's Association Agreement with Ukraine. In M. Rabinovych & A. Pintsch (Eds.), *Ukraine's thorny path to the EU: From "integration without membership" to "integration through war."* Palgrave Macmillan.
- Freudspurger, C., & Schimmelfennig, F. (2025). War and boundary formation: The Russo-Ukrainian War and European integration. In M. Rabinovych & A. Pintsch (Eds.), *Ukraine's thorny path to the EU: From "integration without membership" to "integration through war."* Palgrave Macmillan.
- Haletska, N. (2025). Legal aspects of EU-Ukraine bilateral trade relations during the full-scale war: More trade liberalisation, but under conditions. In M. Rabinovych & A. Pintsch (Eds.), *Ukraine's thorny path to the EU: From "integration without membership" to "integration through war."* Palgrave Macmillan.
- Lazarenko, V., & Rabinovych, M. (2025). Collective protection for Ukrainians in the EU: Laws, practices and implications for EU and Ukrainian policies. In M. Rabinovych & A. Pintsch (Eds.), *Ukraine's thorny path to the EU: From "integration without membership" to "integration through war."* Palgrave Macmillan.
- Oprysk, L. (2024). Harmonisation with the EU *acquis* amid the resistance to Russian aggression as a catalyst of Ukrainian copyright recovery. In M. Rabinovych & A. Pintsch (Eds.), *Ukraine's thorny path to the EU: From "integration without membership" to "integration through war."* Palgrave Macmillan.
- Protsyk, H. (2025). Higher education amid the war: A resilience test for Ukraine's integration into the European Higher Education Area. In M. Rabinovych & A. Pintsch (Eds.), *Ukraine's thorny path to the EU: From "integration without membership" to "integration through war."* Palgrave Macmillan.
- Nitsova, S., Pop-Eleches, G., & Robertson, G. (2018). *Revolution and reform in Ukraine: Evaluating four years of reform*. PONARS Eurasia.
- Shyrokykh, K., Busol, K., & Koval, D. (2025). European integration and reforms in Ukraine amidst the war. In M. Rabinovych & A. Pintsch (Eds.), *Ukraine's thorny path to the EU: From "integration without membership" to "integration through war."* Palgrave Macmillan.
- Shyrokykh, K., & Melen-Zabramna, O. (2025). Europeanization of Ukraine's policy on environment and climate: Instrumental and anticipatory compliance. In M. Rabinovych & A. Pintsch (Eds.), *Ukraine's thorny path to the EU: From "integration without membership" to "integration through war."* Palgrave Macmillan.
- Swanson, P. (n.d.). The lost harbor of Christopher Columbus. *Ocean Navigator*. <https://oceannavigator.com/article/the-lost-harbor-of-christopher-columbus/>

- Van Elsuwege, P. (2025). Revisiting the EU-Ukraine Association Agreement: A crucial instrument on the road to membership. In M. Rabinovych & A. Pintsch (Eds.), *Ukraine’s thorny path to the EU: From “integration without membership” to “integration through war.”* Palgrave Macmillan.
- Van Sant, B. (2012). *The gentleman’s guide to passages south: The thornless path to windward* (10th ed.). CreateSpace Independent Publishing Platform.

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