

The EU's security guarantees commitments to negotiate Ukraine's accession

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The distinguishing characteristic of the next eastward enlargement of the EU is that it is more security-driven than before. Negotiating accession with a country at war is different from the theoretical deterrence drive of previous integration rounds or from providing a prescription for post-conflict peacebuilding in the Western Balkans. Defence owns the hard meaning of the concept of security: having the military capabilities to prevail by force if diplomacy fails. On this front, the EU's offer for future membership of Ukraine falls short of expectations. To be credible, the accession negotiation framework will have to be made more conflict-sensitive and backed up by stronger security commitments.

Joint security commitments

Whereas previous rounds of EU enlargement were preceded by accession of candidate countries to NATO, the latter is — for now — off limits to Ukraine. The encouraging language of NATO's Washington Summit is unlikely to change that reality, especially with the shifting political sands on both sides of the Atlantic.

In order to be able to defend its strategic autonomy, and as part of ongoing efforts to restore the credibility of the enlargement policy, including the fourth Copenhagen criterion of absorption capacity, the EU will have to beef up its own military prowess and stand by its candidate countries. Indeed, the EU institutions

and member states are under a duty of sincere cooperation to deliver on their end of the promise to enlarge the Union and to assist candidates in shoring up their defences. Come the moment of accession, then these security commitments are expected to be raised to the level of hard security guarantees flowing from the mutual defence obligation enshrined in Article 42(7) TEU.

The bombastic rhetoric accompanying the signing of the mutual security arrangements on the margins of the European Council on 27 June, two days after Ukraine began formal membership talks, suggested that the EU will continue to support Ukraine "for as long as it takes and as intensely as needed" (emphasis added). The addition of the latter phrase to existing statements made by several European leaders indicates the EU's collective intention to do its utmost to help Ukraine defend itself and deter future acts of aggression. The EU's commitments extend to helping Ukraine in nine areas of security and defence policy, including arms deliveries, military training, defence industry cooperation, and demining.

In return, Ukraine has committed to undertaking reforms in the area of security, intelligence and defence "in line with its path towards the EU." Whether or not this fits the more pressing logic of waging and winning a war, Ukraine's commitments include civilian oversight of the security and defence forces, the efficiency

and transparency of the defence institutions, and the reinforcement of its defence industry, “building on the European Defence Industrial Strategy”. Ukraine also agreed to contribute to the security of the EU and its member states, including by sharing information and lessons learned, where appropriate. Indeed, a battle-hardened Ukraine with a burgeoning defence industry may have a thing or two to teach the

help Ukraine defend itself and we will continue to do so in the future. Going by repeated pleas by President Zelensky and several of his cabinet members for better air defences and longer-range missiles, it is doubtful that, without continued US support, the EU’s pledge will be sufficient for Ukraine to deter — let alone defeat — Russia.

It is quite telling that, besides the intention to ensure a “predictable, efficient, sustainable and long-term provision of military equipment,” the EU’s default peacebuilding strategy of enlargement has been added as part of the “wider security commitments”. But for EU soft power to prevail, the hard end of the security spectrum will require much more than the military support which the EU and its member states have managed to muster to date.

A negotiating framework fit for the EU’s geostrategic enlargement?

Enlargement with Ukraine and Moldova (leaving Georgia aside now that the government has de facto paused its accession process) has

been triggered by Russia’s full-scale invasion and moves in parallel with defence capability development inside the EU. In this military context, it is indeed appropriate for the EU to characterise the new accession round not as mere geopolitical enlargement but as a “geostrategic investment in peace, security, stability and prosperity” (para 6 of the EU’s opening statement at the intergovernmental conference on accession).

The statement stresses the exceptional circumstances in which accession negotiations were opened: a context of hot war in which the EU has already provided more than EUR 100 billion in assistance and conducts both a military operation and a civilian advisory mission. Never before has the EU ventured to stake out its future borders by accepting the membership application of a country that had

EU and its member states; not just in raising their military awareness and preparedness but also about sequencing accession commitments in times of war.

Whether or not the jointly agreed security commitments send strong enough a message to Russia that it will lose its unprovoked and unjustified war of aggression is a question that can only be answered by the Kremlin. The soft and non-legally binding language of the document suggests, however, that the EU has allowed itself some wiggle room when push comes to shove. In this regard, the mutual security pact follows the tenor of similar bilateral security agreements signed between Ukraine and a dozen EU member states (incl. France, Germany, and Italy), and amounts to little more than a political declaration to state: so far, we have provided “all the necessary” support to

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already suffered and land grab and is caught in an existential fight for its independence.

While the EU professes that its negotiating framework “duly reflects Ukraine's own merits and specific characteristics” (para 10 of the opening statement), attention is only paid to the traditional fundamentals of accession, i.e., the rule of law and fundamental rights, the strengthening of democratic institutions, and public administration reform, as well as economic criteria. The formal negotiating framework ignores the devastating war which saps vast amounts of Ukrainian resources, and which will determine how fast the country advances on its pre-accession track. Other than the mention in Annex 1 to the Annex that meetings may be held via videoconference, there is no indication about the exceptional circumstances created by Russia's war of aggression. The negotiating framework is also silent on the issue of reconstruction, whether of critical, public, or civilian infrastructures.

In the inaugural meeting of the accession conference, the EU did acknowledge that the EUR 50 billion Ukraine Facility supports the recovery, reconstruction and modernisation of the country “in line with Ukraine's EU accession path,” but since the EU's opening statement holds no preambular legal value in the light of which the principles governing the membership talks should be interpreted, the negotiating framework as such remains woefully unmindful of the war.

This raises the question to what extent the formal accession process can be tweaked to introduce the necessary level of conflict sensitivity.

The answer lies in the European Commission's prerogative to propose to the Council of member states benchmarks for each of the negotiating clusters (see Annex). This provides the EU executive already in the second half of this year with a first opportunity to narrow the expectations vs reality gap. After having screened Ukraine's legislative framework and institutional capacity in light of the EU acquis, the

Commission can propose benchmarks in the area of the fundamentals cluster, which — in line with the enlargement methodology developed in 2020 — will be opened first and closed last. In this regard, it is crucial that the Commission pitches conditionality on public administration reform at a level commensurate to the next steps to be taken in the implementation of a comprehensive strategy for the transformation of an under-resourced, gender-imbalanced, and distrusted bureaucracy that will need to win the peace after the army has won the war. In defining opening, interim, and closing benchmarks for subsequent negotiating clusters, the EU can progressively take account of the exceptional and changing circumstances in which Ukraine finds itself.

Apart from allowing some flexibility in setting opening benchmarks, the Council should also decide favourably on a Commission proposal to anchor reconstruction in the formal accession process. At the same time, it should agree on areas for accelerated integration. The negotiating framework mentions that “primary focus should be given to areas where the candidate country already has the capacity and expertise for exports to the EU, and to areas of mutual strategic interest where the candidate country has significant production but needs to meet EU norms and standards, and to other areas where there is a vast untapped potential” (para 13). One obvious area for accelerated integration is that of defence industrial cooperation, through which Ukraine and the member states can co-develop their defence capabilities to give real meaning to the mutual defence clause of Article 42(7) TEU.

It is uncertain that these first steps will be taken under the Hungarian Presidency of the Council, but progress is certainly expected when Poland takes over and the next Commission is in place.

It is on the crossroads of defence and enlargement that the next chapter in the EU's integration process will be written.

ANNEX

Clusters of negotiating chapters / themes

1. Fundamentals	23 – Judiciary and fundamental rights 24 – Justice, Freedom and Security – Economic criteria – Functioning of democratic institutions – Public administration reform 5 – Public procurement 18 – Statistics 32 – Financial control
2. Internal Market	1 – Free movement of goods 2 – Freedom of movement for workers 3 – Right of establishment and freedom to provide services 4 – Free movement of capital 6 – Company law 7 – Intellectual property law 8 – Competition policy 9 – Financial services 28 – Consumer and health protection
3. Competitiveness and inclusive growth	10 – Digital transformation and media 16 – Taxation 17 – Economic and monetary policy 19 – Social policy and employment 20 – Enterprise and industrial policy 25 – Science and research
4. Green agenda and sustainable connectivity	14 – Transport policy 15 – Energy 21 – Trans-European networks 27 – Environment and climate change
5. Resources, agriculture and cohesion	11 – Agriculture and rural development 12 – Food safety, veterinary and phytosanitary policy 13 – Fisheries and aquaculture 22 – Regional policy & coordination of structural instruments 33 – Financial & budgetary provisions
6. External relations	30 – External relations 31 – Foreign, security & defence policy

Source:

Negotiating framework for Ukraine, available at <https://www.consilium.europa.eu/media/hzmfwj/public-ad0000gen24.pdf>, and for Moldova <https://www.consilium.europa.eu/media/45ilqaal/ad00011en24.pdf>.