

## The EU's next Eastward enlargement will be complicated and expensive: accession negotiations, association and new formats should be coordinated

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# SWP Comment

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## The EU's Next Eastward Enlargement Will Be Complicated and Expensive

Accession Negotiations, Association and New Formats Should Be Coordinated

*Barbara Lippert*

Russia's war against Ukraine has led the EU-27 to grant Kyiv EU-candidate status quickly – even hastily, in the view of critics. For now, however, the preparation of accession negotiations can only be a secondary concern. The war, with its uncertain outcome, takes centre stage. For the EU this means supporting Ukraine militarily as well as financially and helping to organise international aid for reconstruction. Given this context, we should expect the EU not simply to adhere to the usual enlargement script in shaping its relations with Ukraine. Instead, it should coordinate three frameworks for action: the future accession negotiations, the current process of association, and potential new formats, such as a European Political Community or a European Political and Economic Area.

At its historic summit in Brussels in June 2022, the European Council decided to open the prospect of EU membership to the “Associated Trio” of Ukraine, Moldova and Georgia. This meant forsaking its previous consensus on enlargement, which had held since 2006, on one important point.

### Farewell to the Consensus on Enlargement

With its Brussels decision, the EU abandoned consolidation, which it defined as restricting any promises of future accession to the six countries of the Western Balkans plus Turkey. The EU thus also exceeded the area for enlargement that it had set itself in

the 1990s with the PHARE aid programme for the countries of Eastern Central and South-Eastern Europe. Of the post-Soviet states, only the three Baltic countries were included in the programme, as they were also, later, in the dual enlargement of NATO and the EU. One reason was that most Western governments had never officially recognised the annexation of Lithuania, Latvia and Estonia by Moscow in 1940–41, not even during the Cold War. Now, the EU's commitment to the Trio resembles its commitment to the Western Balkans in its 2003 Thessaloniki political pledge. If we judge the EU at face value, it is heading for 37-plus members, which will “change the face of Europe forever” (German Chancellor Scholz).



However, the EU intends to adhere to the second component of the consensus on enlargement: strict conditionality. New members will thus still be subject to the political and economic Copenhagen criteria, as well as the obligation to adopt the EU's primary and secondary legislation in its entirety upon accession. The EU-27 are also not willing to reconsider the fourth criterium, the EU's capacity to absorb new members. In the Commission's opinion on the accession applications, it succinctly addresses this point in a single sentence, stating that it will assess the impact of the accessions on EU policies later. Before the first eastward enlargement, the Commission had produced the comprehensive communication Agenda 2000 — for a stronger and wider Union in 1997. There is currently not enough time — and probably not the political leadership either — for such a multidimensional analysis. Official government statements about the European Council summit in June 2022 thus exhibited the usual differences, which are generated by the fundamental tension between enlargement and reforms (or the EU's capacity to absorb). This ongoing discourse will also accompany the next phases of the enlargement process.

The third component of the 2006 enlargement process concerns communication vis-à-vis EU citizens and the candidate countries. The war has led to most EU citizens supporting quicker admission for new members. Approval ratings for enlargement are still below the EU average of 58 percent in traditionally more sceptical countries, such as Austria (45 per cent), France (47 per cent), the Netherlands (46 per cent) and Germany (53 per cent), but in Denmark, for example, they recently exceeded it (62 per cent). However, any war-related impact on prosperity, combined with rising inflation, could once again create more scepticism among EU inhabitants. Support for EU membership in the Trio countries is very high; in Ukraine it has reached record levels.

Eurobarometer polls show that the mood in the Western Balkans is still relatively positive when it comes to trust in the EU

and the image of the EU, even though disappointment about the halting accession process has been spreading for some time. In many countries, it is especially governments and political elites who declare that the EU's accession pledge is not reliable, and the EU itself not credible. This is already casting a shadow over future negotiations with the Trio countries.

## Accession Negotiations: Routines and Reforms

Whilst the 27 EU-governments were propelled forwards by the June decision, they could show as early as the European Council meeting in December that they set the pace, timetable and modalities of the enlargement process. We should expect the EU to adapt the process somewhat due to certain specifics as well as war-related complications, but not to fundamentally change its methodology.

In its Brussels decision, the European Council recognises the European prospects of Ukraine, Moldova and Georgia, and views their future as being inside the EU. This mostly corresponds to the previous Thessaloniki formula. Ukraine and Moldova have also been granted accession candidate status. The Council will decide on further moves as soon as Kyiv has taken the seven steps and Chişinău the nine steps listed by the Commission in its opinions. These concern above all specific requirements relating to the rule of law, the independence of the judiciary, the fight against corruption and the protection of minorities. These requirements are overwhelmingly part of the cluster "Fundamentals", which contains those chapters of the *acquis communautaire* that are to be opened first and closed last during accession negotiations. The European Council has promised to grant Georgia candidate status as soon as it has implemented 12 conditions, so-called "priorities". The reasons for this differentiation include Georgia's halting reform efforts, political polarisation and ineffective government.

## Opinions

The European Council is thereby following Commission recommendations as expressed in the latter's opinions on the accession applications. These opinions contain rather general or rough evaluations of the situation within the three countries as regards the Copenhagen accession criteria. For Ukraine, while the effects of the war and its consequences are still unforeseeable, the reference point is the pre-war period.

The Commission has delivered a finely graded verdict on the countries' political maturity with a view to qualifying as candidates. Ukraine is "well advanced", Moldova has a "solid foundation" and Georgia a "foundation" for attaining institutional stability. In the past, the Council agreed to candidate status and to opening accession negotiations even in cases where the political criteria were only met "sufficiently" (Turkey and Serbia). The fact that accession negotiations have now taken ten years or more reduces the risk threshold for the member states' changing governments and relativises each government's responsibility. In other cases, the Commission has also appraised the political criteria as not being sufficiently met to open negotiations, for instance in its 2019 opinion on Bosnia-Herzegovina's application for accession. However, this issue was not yet on the agenda for the Trio.

In the three countries, the structural power and networks of oligarchs run counter to a functioning market economy. So does the lack of independent and effective justice systems, including criminal prosecution authorities, which might act against the corruption that is widespread in even the highest circles, or against organised crime. Foreign investment is minimal partly due to these deficits and uncertainties. The Commission did attest that Ukraine's macroeconomic track record was solid and remarkably resilient, and that Moldova showed a solid degree and Georgia a high degree of macroeconomic stability.

The Commission dealt rather cursorily with the issue of how far the three coun-

tries had already approximated the *acquis communautaire*. However, it can consider the roadmaps for the implementation of the comprehensive Association Agreements (AA/DCFTA), which already cover substantial parts of the *acquis*. The negotiations will nonetheless follow their own logic. They will comprise 33 negotiation chapters divided into six clusters in accordance with the new methodology, introduced in 2020. For its decision, the Commission does not probe in detail the extent to which the *acquis* has been adopted, but rather chooses examples and lists potentials, progress and deficits.

The Commission nevertheless produces overall assessments which are — as expected — variegated everywhere, ranging from overall satisfactory (Ukraine) to satisfactory (Moldova) to overall positive (Georgia). It is the screening process which shines more light on the implementation results. This process usually starts shortly before negotiations are opened and lasts many months. Depending on the length of the negotiations, screening continues later. This is also linked to the benchmarking system: specific benchmarks are agreed and checked for every opening and provisional closing of a chapter.

The Council is likely to assess next year (at the earliest) to what extent the three countries have met the required steps or priorities. The Commission should also take a position on which specific preconditions are still to be fulfilled in these countries before it can recommend opening negotiations. Above all, the Council awaits the vote of the European Council, which reserves the right to such decisions on direction. This gives the EU authorities room for manoeuvre to act according to the momentum of the war, the overall geopolitical constellation and the domestic political situation in the three countries.

## The framework for negotiations

On a proposal from the Commission, the Council will decide on a distinct negotiating framework for each accession negotiation.

This framework will show that superiority throughout the process will lie with the EU member states and that accession conferences with the candidates are in essence intergovernmental conferences — even though, operationally, the ball is in the Commission's court. This propels the Commission into a key role. It has already become clear that it has considerable influence over the speed with which the Trio countries are added to the EU's enlargement policy. Commission and European Parliament have long been decidedly pro-enlargement.

Within the negotiation framework, the principles are generally laid down first. These are mainly the provisions of EU primary law and the accession criteria; the recourse to European Council conclusions with their demands towards or their expectations of the candidate; the rules for suspending negotiations; and references to processes running in parallel to the negotiations (for instance between the EU and the country's civil societies). Other stipulations concern the substance of the negotiations. For example, the EU can set out its own interests concerning the terms and duration of transition rules, which has traditionally meant the free movement of persons and the graduated integration into the costly Common Agricultural Policy and cohesion policy. In the past, the EU used its advantageous negotiating position to signal that it would protect its own interests and that the other side needed to prepare for (long) transition arrangements. Another section explains the negotiation process, which will follow the new methodology. In this context, we can hardly expect the member states to declare that they will be suspending their bilateral quarrels with candidate countries within the accession negotiations. It is important, however, that the Council explicitly considers this uncooperative practice as behaviour that damages the Union.

The negotiation framework is thus a political document that the member states use to agree on what to negotiate and how. They can simultaneously stake out some political ground. For example, they can

create links to the parallel association process and to new formats, such as a European Political Community. Both can be used for graduated admission into the EU — whether in the sense of a de facto integration below the membership threshold or a totally new special status of partial membership within the EU.

## **The Association Process and Support**

The Association Agreements with the Trio countries are much more strongly directed towards integration into the EU's internal market than the stabilisation and association agreements with the countries of the Western Balkans, which are essentially little more than classic free trade agreements. With Ukraine, Georgia and Moldova, the EU has concluded agreements on Deep and Comprehensive Free Trade Areas (AA/DCFTA), which include, as well as the dismantling of customs tariffs and non-tariff barriers, the gradual adoption of the Four Freedoms and sectoral regulations or cooperation. The latter concern the energy sector, macroeconomic cooperation, the environment, traffic, industrial and entrepreneurial policy, mining, fisheries, financial service provision, science and technology. The Commission's regular reports on implementation reveal that, alongside their difficulties as regards good administration and governance, the justice system and the strengthening of institutions, the countries have also only partially implemented their obligations. Commission President von der Leyen's claims that Ukraine has already implemented 70 per cent of the *acquis* are greatly overestimated or ambiguous.

One complication, whose consequences are still hard to gauge, is that in Ukraine, Moldova and Georgia the state does not control its entire territory, and this is unlikely to change for the time being. While the EU does already have a member, namely Cyprus, with a separate de facto state, this example is markedly more relaxed given its island status, power constellation

Table

**The Associated Trio: EU funding received as loans and subsidies (2014–2021)**

	Population	ENI	MFA	EIB/EBRD	Others
<b>Ukraine</b>	43.5 m	1.7 bn euros	5.6 bn euros	9.5 bn euros	19 m euros (humanitarian aid)
<b>Moldova</b>	3.3 m	512 m euros	160 m euros 150 m euros (energy crisis)	425 m euros / 777 m euros	60 m euros (budgetary assistance) 7 m euros (EPF)
<b>Georgia</b>	4.9 m	819.2 m euros	166 m euros	1.6 bn euros / 2.3 bn euros	159.6 m euros (from foreign policy instruments)

EBRD: European Bank for Reconstruction and Development; EPF: European Peace Facility; EIB: European Investment Bank; ENI: European Neighbourhood Instrument; MFA: Macro-Financial Assistance. Source: Author's representation based on statements by the European Commission on the accession applications of Ukraine, Moldova and Georgia on 17 June 2022; population figures from CIA World Factbook (estimates for 2022).

and security situation compared to the conflict areas, each different, in Ukraine (at the very least Crimea and the Donbas), Georgia (Abkhazia and South Ossetia) and Moldova (Transnistria and Gagauzia). Pragmatic solutions have been found to implement the AA/DCFTA, but a partial implementation of the EU acquis following accession is likely to be noticeably more complicated. Above all, however, the conflicts give Russia permanent leverage for intervening in these future EU countries and exerting pressure – to which the whole Union will then have to react.

For years, the EU has supported Ukraine, Georgia and Moldova financially under the European Neighbourhood Policy, using the ENI instrument (now known as NDICI) (see Table). After Russia's annexation of Crimea in 2014, the EU significantly increased funds; it has contributed to the macroeconomic shoring-up and reform of policy areas and been key in attempts to strengthen institutions in Ukraine while its sovereignty is under threat. To coordinate the aid, the EU employed a special support group (SGUA), which no longer financed individual projects or programmes but sectoral reform packages and the building-up of institutions. This shift from the ENP

to a policy of enlargement means that the candidate countries can expect to be allocated substantially higher resources. For example, the six countries of the Western Balkan with a total population of around 18 million can count on about 9.2bn euros (IPA III) in the period 2021–2027. In contrast, the population of the Associated Trio is almost 52 million.

The war has led to extraordinarily vast sums of aid being disbursed for Ukraine as well as Moldova. Since the Russian attack in February 2022, the EU has assisted Ukraine with 12.82bn euros in financial aid, including 2bn euros via the EIB; 1.42bn in humanitarian aid; and 2.5bn euros in military help via the EPF. Moldova has received 52m euros in resilience and reconstruction aid; 53m euros of budgetary assistance; 150m euros in macro-financial assistance; 13m euros of humanitarian aid; 40m euros in military aid via the EPF; 15m euros in support for receiving refugees; 15m euros to assist border protection (EUBAM); and a loan of 150m euros via the EIB for integration into the Trans-European Transport Network.

It is a massive challenge for the EU to mobilise the large sums for reconstruction, coordinate them with other donors, and

guarantee their appropriate and effective use. This was similarly true after 1989 – though in a spirit of optimism – when the EU took on the task of coordinating the international aid for the transformation of Eastern Central European countries into market economies. Starting with Poland and Ukraine, the PHARE programme consisted of almost 9bn euros (commitments) for 13 countries in its first phase from 1990 to 1998, including plurilateral and horizontal programmes.

International financial institutions and donor countries will have to agree on governance for Ukraine's reconstruction aid; the EU will once again take on the coordination. The Commission has already created a reconstruction platform for overseeing and adjusting investment needs, resources and measures. Forty-two governments were represented at the Ukraine Recovery Conference, which was held in Lugano in early July, as well as the EBRD, Commission, OECD and Council of Europe. The same circle is likely to plan the reconstruction aid, based on the seven principles announced in Lugano. The intention is that Ukraine will steer international aid. During implementation, international partners will pay scrupulous attention to transparency, accountability and the rule of law; in other words, they will watch for large-scale corruption, misappropriation of public funds and money laundering, which are known abuses from before the war. The decisive issue will be whether Ukraine's elites will reposition themselves on these issues. At the conference, the government in Kyiv put reconstruction costs at around 720bn euros; these costs are rising with every day of further destruction brought about by the war. In Lugano, conference members did not specify what conditions they might tie to the allocation of funds. However, the EU ought to do so for its contributions. There is already controversy among the member states over the type of allocation (grants versus loans). It also needs to be decided whether reconstruction and preparation for accession should each have its own fund with different conditionalities or whether

financing from one pot would be administratively and politically preferable.

### **Eastern Partnership: obsolete?**

Since 2009, the Trio countries have also been part of the EU's Eastern Partnership (EaP), which consists of Armenia, Azerbaijan, Georgia, Moldova, Ukraine and potentially Belarus. The EaP was launched as a Polish-Swedish initiative under the impression of the 2008 war in Georgia and the intensifying geopolitical competition between Moscow and Brussels in the post-Soviet space. Bilateral agreements with the EU are the backbone of the EaP, but it also has a multilateral dimension. In May 2021, the three pioneer countries (meaning those with an AA/DVFTA) formed the Associated Trio, thus disengaging from the others. By granting them (potential) candidate status, the EU is reproducing this step, without entirely having given up the multilateral dimension. What is not obsolete is the transversal and transnational logic of the EaP platforms in (1) good governance, (2) economic development, (3) connectivity, energy efficiency, the environment and climate change and (4) mobility, multilateral civil-society contacts. However, there is a lack of political momentum. Other multilateral formats do not necessarily supersede the EaP, but it does need to be adjusted for the new contexts of war and enlargement policy.

### **New Formats, Intermediate Stages**

With its proposal for a European Political Community (EPC), France has shifted the goal posts. The European Council could not refuse to engage with the proposal and sketched, via the Czech presidency, what a first meeting of this format could look like.

Based on this, the EPC is intended as a platform for political coordination among all countries of the continent with which the EU has close relations, currently excluding Russia and Belarus. Its purpose would be political dialogue and cooperation



on security, stability and prosperity — in an inclusive “Europe Group”, which would exchange on common challenges and stipulations for any action. While President Macron’s initial proposal was vague, it did suggest more specific connections to the accession processes. One interpretation of the original proposal is that the EU would thus create an intermediate stage on the road to membership. The EU-27 discussed the EPC at length in the European Council, mainly to come to an understanding about its limits. It is not intended as a replacement for EU enlargement, and it must not limit the EU’s autonomy in decision-making in any way. The latter is reminiscent of the demarcation by the European Court of Justice for the European Economic Area (EEA) and its entities. The recent shifting of the goal posts provides many opportunities for both the “Enlargement Team” and the “Deepening Team” among member states and authorities to drive forward their agenda. Here, too, there are obvious precedents — such as the European Confederation proposed by President Mitterrand in 1991, which was then still influenced by the Charter of Paris for a New Europe including potentially the USSR (or rather Russia). Like Macron today, Mitterrand believed that the next enlargement was still decades away.

In 1998, the EU created a European Conference to which it invited all countries hoping to join the Union. The forum’s overt political inclusiveness was meant to attenuate the performance-orientated selectiveness of the accession process. However, because it promised participant states little additional expediency — like the “structured dialogue” on sectoral policies — the European Conference remained a one-off. The participants concentrated wholly on the negotiation processes and made relatively swift progress there. It should be assumed that the Trio will be similarly single-minded. The Commission President and several heads of government have already strongly focused their rhetoric on a geopolitical and moral argumentation, which could amount to a rapid emergency

enlargement. Obviously, this would result in the internalisation of all risks and outlined sets of problems into the EU.

However, the scenario for the Trio could be quite different from the case of the Eastern Central Europeans in the 1990s. One difference is the interest of the three countries and the EU in closely coordinating their foreign and security policies and in closing ranks against their adversary, Russia. An additional new factor is that the countries — and Ukraine most of all — need security guarantees that the EU alone cannot give, and NATO does not want to give. The EU should therefore consider whether it wants to develop a foreign and security profile for the EPC in the antechamber of NATO and the EU. From this perspective, it would be meaningful to include the United Kingdom as well as Turkey. A possibility more directly tied to the association process would be for the EU and the Trio together to form a European Political and Economic Area (EPEA) modelled on the EEA. The EPEA could be a provisional or permanent organisation and would confer privileged status on the Trio. That status would remain below membership. However, the graduated adoption of the internal market *acquis*; the inclusion of policies that accompany the internal market; transfers from the EU budget; and the opening-up of EU programmes would give it a more comprehensive and more explicitly political profile than the EEA. The advantages would be that: time could be gained for both sides to prepare for the accession/admission; more possibilities would be created for interest-led flexible regulations than the non-negotiable conditions for membership currently allow; and frustration levels could be kept low. The EPC intends to offer protection and resilience. For this, it requires an operational substructure, which the EPEA could offer. An EPEA or other intermediate stage would be a safety net in all scenarios. After all, admission into the EU is only concluded when all member states have ratified the accession treaty. Accession comes neither under the CFSP rules nor the Passerelle clause. Article 49 TEU stipulates unanimity



for accession since the admission of any new members concerns the entire EU constitution.

## Outlook: The EU's Reform Leverage and Absorption Capacity

The EU must address two key issues if it is to pursue an enlargement policy that is responsible towards its own citizens. What leverage for reform does it have vis-à-vis the candidate countries, and what is its own absorption capacity? As far as the influence on reforms is concerned, the balance sheet of the past few years for the Western Balkan countries is negative, despite their membership perspective. The EU did remain united during the polycrisis and following the Russian attack on Ukraine. But fundamental convictions in the 27 member states on integration, the economic performance and political preferences and margins are drifting further apart, and this is already putting a strain on the common body of regulations – see the Stability and Growth Pact, NextGenerationEU.

If the EU expands continentally and admits many small countries with a weak democratic constitution and uncertain borders, it risks at the very least losing its ability to function because it is a state-dependent system. This ability rests on legitimate law-making by EU bodies, the law-abiding conduct of democratic member states in the multi-level system, and shared political goals. With its Janus-like supra-national and intergovernmental form of government, the EU is a unique political project. Its next enlargement could become its predetermined breaking point. Then, if not before, it will require a new constitutional order. An EU with concentric circles or overlapping areas of varying depths of integration is likely to be even more complex and experimental.

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