

The Long-Term Prospects for Ukraine's Accession to the European Union

A FOCUS ON EU-LEVEL CONSTRAINTS

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When Ukraine's newly elected president Petro Poroshenko was inaugurated on June 7, he announced his intention to sign an Association Agreement (AA) with the European Union and to pursue EU membership once the EU agreed to it. This last qualifier is particularly relevant, as opportunities for membership are not only constrained by Ukraine's political and economic development and by Ukrainian- Russian relations but also by important formal and informal barriers to European integration stemming from within the EU itself. Given the size of Ukraine's population, quality of governance, rule of law, problems with corruption, level of economic development, and now the country's unsettled borders, the EU is unlikely to accelerate Ukraine's path to membership. Even in a more stable environment, challenges to Ukraine's accession to the EU remain quite significant, given the lack of enthusiasm for continued enlargement among EU member states and the procedural and structural hurdles that exist on the European level.

A Long Path toward Integration

For nearly two decades, Ukraine's successive governments have worked with EU technocrats to chart a course for increased political and economic cooperation, holding the first EU-Ukrainian summit in 1997. Efforts to strengthen Ukraine's relationship with Europe intensified with the election of President Viktor Yushchenko after the Orange Revolution of 2004-5 and once again following the 2014 political crisis. Despite years of technical discussions, political negotiations, and summits, however, there is still no formal perspective for Ukrainian membership into the EU and accession is (at best) decades away. At present, EU accession is more of an abstraction for Ukraine than it is for Turkey, a country that signed an AA in 1964, submitted its membership application in 1987, and gained the formal status of candidate country in 1999. Despite the

extraordinary events that followed President Yanukovich's refusal to sign the Association Agreement in November 2013, and the great fanfare surrounding its signing this June by his successor, the AA does not offer any promise or prospect of joining the European Union. That said, the agreement does offer important immediate benefits. As the AA moves into the ratification phase, Ukrainian exporters will gain immediate asymmetrical access to European markets for nearly all goods. Moreover, while Ukrainian exporters will no longer need to pay custom duties, Ukraine can impose duties on European goods, including in some areas for protective transitional periods for up to fifteen years.

The EU's unwillingness to offer a membership prospect has often been lost in the vast coverage of recent events. In the midst of the 2014 crisis, European leaders understandably wanted to demonstrate support for Ukraine and acknowledge the extraordinary courage and sacrifices of the many Ukrainians seeking a future within Europe. Europe's politicians have proclaimed their support for Ukraine's interim and elected governments, and affirmed Ukraine's sovereign right to determine its own alliances. In February, the European Parliament passed a resolution reiterating Ukraine's right to apply for full membership, echoing Article 49 of the Treaty on the European Union which grants any European country that "respects European values and is committed to promoting them" the right to apply for membership.

Despite these offers of support and solidarity, there are many obstacles to overcome for the EU to accept Ukraine as a candidate country, let alone a full member. The lion's share of these challenges relates to Ukraine's ability and will to undertake difficult electoral, judicial, and economic reforms. It must not only harmonize its own law with the body of EU law (the nearly 100,000-page *acquis communautaire*), it must demonstrate its ability to implement EU law as well. As difficult as these challenges are, other obstacles to Ukraine's membership stem from the EU itself, owing to the EU's own overextension and widespread sense of "enlargement fatigue."

Unanimity Constraints and EU Enlargement

One challenge to future EU membership is the declining support for future enlargement within existing member states. European citizens, especially in the older member states, have grown wary of the costs and risks associated with future enlargement. Public opinion surveys have reported consistent majority opposition to further EU enlargement, starting with the spring 2009 Eurobarometer survey. Furthermore, strikingly large majorities in a number of key countries oppose further EU enlargement, with the greatest opposition recorded in Austria (76%), France (70%), Germany (69%), Finland (65%), the Netherlands (64%), and Luxembourg (64%), according to the latest Eurobarometer survey (Fall 2013). Such opposition is similarly found in surveys conducted by national polling agencies in Austria, France, Germany, and the United Kingdom, reporting not only a lack of support for enlargement generally but even for Ukraine in particular.

While strong majority support for enlargement exists in many newer member states, the extent and breadth of public opposition within the EU poses a substantial problem. The EU cannot incorporate more members without the unanimous approval of every existing member through a ratification process. It is hard to imagine that political elites in states with high popular opposition (and that make net contributions to the EU) will push for membership when popular support is so low. Indeed, when public opposition to Turkey's EU membership prospects began to mount, several European politicians promised to hold referenda prior to any future EU enlargement. For example, France in 2005 incorporated into its constitution a clause roughly similar to that in Ireland's constitution requiring a popular referendum before ratifying a treaty granting membership to a country if the country's population is more than 5 percent of the EU's overall population. While the clause in the French constitution was revised in 2008 to allow an alternative parliamentary ratification procedure, Ireland's clause remains in effect. But even should most leaders find themselves willing and able to circumvent popular opposition, it only takes one veto to block a country's candidacy given the EU's unanimity requirement.

Apart from popular sentiment, elites themselves can find reason to delay or block a membership bid by Ukraine. For example, Greece has blocked Macedonia's ability to begin accession negotiations due to disagreements over the latter's name and over differing interpretations of Macedonian and Greek history. The Czech Republic managed to stall Albania's EU candidacy due to a commercial dispute after Albania revoked the license of Czech utility company ČEZ. If the dispute is not resolved to Prague's satisfaction, the Czech government has pledged to block Albania's membership prospects indefinitely. In the case of Ukraine, it is certainly possible to imagine challenges related to Ukrainian steel exports by strong lobbies in Brussels (related to unfair state aid), or other commercial and geopolitical disputes not yet anticipated.

The EU's current Enlargement Commissioner, Štefan Füle, recently reflected upon the expanded ability of states to block the membership prospects of aspirant countries. In a June 26, 2014 interview, the Commissioner stated, "Before I started working in the European Commission, member states had just a few tools to influence, or even stop, the enlargement. Now they have more than 100 possibilities to do it. We do not want to slow down the process in any way. But every member state now has more possibilities to oversee good quality preparations of the candidate countries."¹

The unanimity requirement on key areas of EU institutional reform, including enlargement treaties, means that opposition by a small minority of member states can block reforms and treaties despite years (if not decades) of work by enthusiastic EU elites, as seen in the negative votes by France and Netherlands of the EU Constitution in 2005. While the EU managed to get around Ireland's first rejection of the Lisbon Treaty

¹ <http://www.euractiv.com/sections/enlargement/fule-bulgaria-and-romanas-accession-questioned-credibility-eu-enlargement>

through a successor Lisbon Treaty, treaty ratification remains fraught with uncertainty and risk.

The Costs of Ukrainian Membership

As uncertain as future membership is for the current approved group of small candidate states in the Western Balkans, it is all the more complicated for a very large, poor, non-candidate country like Ukraine. Public opinion data show that European respondents are more likely to support the accession of a smaller and wealthier country like Iceland than they are of poorer countries (Iceland's GDP per capita exceeds that of the EU).

There is no question that the economic dimension of enlargement has become more salient in the aftermath of Europe's financial and sovereign debt crises. Public opinion began to shift after the 2007 round of enlargement incorporated two of the poorest members to date, Bulgaria and Romania. Moreover, the shift from majority support for enlargement to majority opposition in spring 2009 occurred at the onset of Europe's recessions. Emphasizing the impact of Europe's economic crisis on public attitudes, a 2010 Eurobarometer report highlighted a substantial drop in support for enlargement in precisely those Eurozone countries under the greatest fiscal stress. From spring 2008 to fall 2010, support for future enlargement dropped 14 percent in Greece, 13 in Ireland, 11 in Spain, and 9 in Portugal.²

A heightened sensitivity to the costs of enlargement following the recent bailouts in Europe is especially relevant for Ukraine. Ukraine is much poorer and much larger than any current candidate country (save Turkey). Whereas the total population of the EU is just over 500 million, Ukraine's population exceeds 45 million. By contrast, Croatia, the most recent EU member state to join in 2013, has a population size just over 4 million. Iceland and Montenegro, two of the five current candidate countries, together have less than one million citizens. The single recently added EU member close to Ukraine's size is Poland with a population of 38 million. The only candidate country with a population larger than Ukraine is Turkey (71 million), but like Poland its GDP per capita is more than double that of Ukraine. In any case, Turkey's very long EU accession record is not one many Ukrainians would wish to emulate.

Of course, it is not only Ukraine's population but its level of economic development that makes membership so costly for the EU. Ukraine is much poorer than Bulgaria, the poorest existing EU member state. Using 2013 World Bank pre-crisis (mid-year) figures, Ukraine's GDP per capita (\$3,900) was slightly over half (53%) that of Bulgaria (\$7,340). Ukraine's GDP per capita is also just over one-tenth (11%) that of the EU average (\$34,240). For the sake of comparison, the GDP per capita of Croatia, the newest EU member, is almost identical to that of Poland (\$13,520) and higher than that of the largest candidate country Turkey (\$10,945).

² http://ec.europa.eu/public_opinion/archives/eb/eb74/eb74_publ_en.pdf

Ukraine's relatively low GDP per capita means it would be eligible to receive significant structural and cohesion funds from the EU budget under current rules. Such funds are intended to reduce disparities between regions within the EU. Accordingly, regions with a GDP per capita below 75 percent of the EU average can apply for structural funds. No region in Ukraine is currently above this eligibility threshold, including Kyiv. As a result, the addition of 45 million Ukrainian citizens to the EU would be a costly undertaking given current funding arrangements.

Good Governance and Rule of Law

Ukraine's membership prospects are also linked to significant legal and political challenges. In discussions over Ukraine's AA, EU negotiators repeatedly expressed concern over Ukraine's high level of corruption and insisted upon reforms within the judicial and electoral systems, as well as the release of former Prime Minister Yulia Tymoshenko from prison for medical treatment. With Tymoshenko's release in February 2014, this latter impediment no longer exists. However, political and economic corruption remains especially salient in the minds of Commission officials after the 2007 enlargement round. There is a growing sense that the EU may have rushed the membership of Romania and Bulgaria, two states that have continued to suffer from persistently high levels of corruption after accession. Indeed, the carrots and sticks available to the EU to discipline countries after enlargement have proven ineffective. As Commissioner Füle stated rather bluntly in his June interview, "The last enlargement of Romania and Bulgaria brought a lot of questions about the credibility of the whole process....It was the first time that the EU decided to establish a special cooperation and verification mechanism on existing member states. The biggest challenge was to return the lost credibility to the enlargement process. It forces us to expand and tighten benchmarks."³

If perceptions do not change and Bulgaria and Romania's accession continues to be seen as premature and problematic, Ukraine will find itself in a relatively cautious enlargement environment. While difficult to quantify, estimates of corruption in Ukraine are significantly higher than those for Bulgaria and Romania. For example, in Transparency International's 2013 "Corruption Perception" index, Ukraine ranks 144th out of 177 countries, whereas Bulgaria and Romania rank 77 and 69 respectively. (Note that Ukraine ranks even below Russia, which ranks 127th.)

Territorial Integrity and Ukrainian Sovereignty

A final impediment to Ukraine's EU accession relates to questions surrounding the country's territorial integrity. Ukraine must be in a position to meet the obligations of accession outlined in the 31st chapter of the *acquis* concerning foreign, security, and

³ <http://www.euractiv.com/sections/enlargement/fule-bulgaria-and-romaniacs-accession-questioned-credibility-eu-enlargement>

defense policy. This requires Ukraine to harmonize with existing political declarations and EU agreements. Accordingly, member states “must be able to conduct political dialogue in the framework of CFSP (Common Foreign and Security Policy), to align with EU statements, to take part in EU actions and to apply agreed sanctions and restrictive measures.”⁴ Ukraine may face special challenges, and find itself unable to credibly commit to the security and defense chapters of the *acquis*, given Russia’s occupation of Crimea.

In a similar vein, the resolution of open border disputes is a precondition of EU membership. It is unclear for how long Ukraine’s borders will remain unstable, as secessionist claims in eastern Ukraine fester and uncertainty over the status of Crimea endures. Unless Ukraine concedes Crimea to Russia or Russia repudiates its claims and relinquishes its de facto control over the peninsula, Ukraine will fail to meet one of the most fundamental conditions for opening accession negotiations.

Conclusion

Despite strong words of encouragement from European leaders and EU officials during the crisis, as well as their willingness to provide substantial financial support to prevent a downward economic spiral in Ukraine, serious obstacles to EU membership remain at both national and European levels. Given the challenges associated with Ukraine’s political and economic harmonization, its ongoing conflict with Russia, and the serious obstacles stemming from within Europe itself, Ukraine’s path to membership will be long and the outcome uncertain.

4. http://ec.europa.eu/enlargement/policy/conditions-membership/chapters-of-the-acquis/index_en.htm