

## GUEST EDITORIAL

### *“Accession through war” – Ukraine’s road to the EU*

#### *Applying for EU membership in time of war*

Ukraine formally applied for EU membership on 28 February 2022 in the most tragic circumstances. President Zelenskyy signed the letter of application just a few days after Russia launched its full-scale invasion of the country, and as Russian troops were only about 15 kilometres from his office in Kyiv.

The formal application was an act of despair by a country already at war since 2014, and now fighting for its very survival. But the Ukrainian President’s bold move was also salutary: the application considerably boosted the combatting morale of the Ukrainian nation, and successfully challenged the EU to provide extensive support and live up to its fundamental principles.

Beyond the unprecedented measures the Union and its Member States took to assist Ukraine’s war effort, the EU’s reaction to the application – which was immediately followed by similar bids from Moldova and Georgia – was remarkably fast by any standards. It only took a week for the EU Council to activate the procedure of Article 49 TEU and invite the European Commission to issue its Opinions on the respective applications. The Commission too acted swiftly.<sup>1</sup> By 17 June 2022 it had already assessed the three applicants’ ability to join the EU.

Finding that “Ukraine is a European State which has given ample proof of its adherence to the values on which the European Union is founded”, the Commission recommended to the Council that the country “should be given the perspective to become a member of the European Union”,<sup>2</sup> and to the European Council that it should be granted the (much sought after) “candidate status” – a label that is not formally envisaged by the procedure of Article 49 TEU, but which has de facto become a milestone in the accession process.

1. “So we will accelerate this process as much as we can, while ensuring that all conditions are respected.” Statement by President von der Leyen with Ukrainian President Zelenskyy at the occasion of the President’s visit to Kyiv, 8 April 2022, <[ec.europa.eu/neighbourhood-enlargement/news/statement-president-von-der-leyen-ukrainian-president-zelenskyy-occasion-presidents-visit-kyiv-2022-04-08\\_en](http://ec.europa.eu/neighbourhood-enlargement/news/statement-president-von-der-leyen-ukrainian-president-zelenskyy-occasion-presidents-visit-kyiv-2022-04-08_en)>, all websites last visited 23 Aug. 2022.

2. Commission Opinion on Ukraine’s application for membership of the European Union, Brussels, 17 June 2022, COM(2022)407 final.

While confirming that Ukraine's accession would be based on "established criteria and conditions", including the so-called "Copenhagen criteria", the Commission also requested urgent reforms in seven sectors, in line with the EU *acquis*, namely: the judiciary, the rule of law, the fight against corruption, national minorities, anti-money laundering legislation, anti-oligarch legislation, media legislation. It also committed itself to monitoring Ukraine's progress in those fields, and to issuing an assessment of the situation by the end of 2022.

Although less favourable, the Commission's Opinions on the respective applications of Moldova and Georgia came to the same conclusion: the two countries were to be given a perspective to become Member States of the Union.<sup>3</sup>

The European Council endorsed the Commission's recommendations only a few days later, and recognized that "[t]he future of [the three] countries and their citizens lies within the European Union". Candidate country status was granted only to Ukraine and Moldova however, Georgia being asked to address the priorities of domestic reform indicated in the Commission's Opinion first in order to be able to obtain "candidate country" status.<sup>4</sup>

#### *A "classic" EU accession process?*

The European Council's decision to grant candidate status to Ukraine would probably not have happened in pre-war circumstances. While the country's aspirations to join the EU have been clear for some time, formally applying for membership was not seriously contemplated in Kyiv before the Russian invasion. Russia's aggression thus paradoxically turned into reality the long-cherished dream of Ukrainians *formally* to engage on an EU membership course.

Instead, the Ukrainian authorities had concentrated their efforts on the demanding implementation of the Association Agreement, considered as "the most advanced agreement of its kind ever negotiated by the European Union",<sup>5</sup> and characterized by its unprecedented *comprehensiveness, complexity* and *conditionality*. The Agreement indeed governs the entire spectrum of Ukraine's relationship with the EU, with the ambitious aim of

3. Commission Opinion on Moldova's application for membership of the European Union, Brussels, 17 June 2022, COM(2022)406 final. Commission Opinion on Georgia's application for membership of the European Union, Brussels, 17 June 2022, COM(2022)405 final.

4. European Council Conclusions, Brussels, 24 June 2022, EU CO 24/22.

5. European Council, Press Remarks by Herman Van Rompuy, President of the European Council, following the EU-Ukraine Summit, Brussels, 25 Feb. 2013, EU CO 48/13. Available at <[europa.eu/rapid/press-release\\_PRES-13-74\\_en.htm](http://europa.eu/rapid/press-release_PRES-13-74_en.htm)>.

integrating the country into the EU Internal Market, based on its ability to implement the relevant EU *acquis* and to observe its values.<sup>6</sup>

To be sure, the Commission's annual report on the implementation of the association agreement had never been overly positive.<sup>7</sup> Even Ukraine's internal evaluation of the domestic implementation efforts was rather humbling.<sup>8</sup> In other words, had the Commission (and the European Council) been asked before 24 February 2022 to assess Ukraine's (as well as Moldova's and Georgia's) ability to join the Union by reference to established accession standards, its Opinion would likely have been far less supportive.

Arguably therefore, the EU Member States and institutions have granted the candidate status to Ukraine essentially as an act of moral support, to boost the country's resistance to the aggression and, perhaps more than ever in the history of EU enlargement, as a (geo)political decision rather than a scrupulous legal application of the conditions related to Article 49 TEU. Russia in effect boosted the eligibility of Ukraine, and incidentally that of Moldova and Georgia – whose respective territorial integrity has also been undermined by Russia-backed forces. If so, the question can then be raised whether the three new applicants' accession *process* will continue to be framed by this extraordinary "accession through war" approach, or whether it will ultimately fall back onto the "classic accession" track, as applicable to candidate States before the war.

"Accession through war" entails that the war justifies the EU taking a different approach in its assessment of the applicant's ability to join the Union. It implies a more favourable EU treatment of the membership application if and because the applicant is fighting, literally, to defend common European values as defined in Articles 2 and 21 TEU. If such a country is committed to respecting those values, notably by taking an active part in the EU external

6. Van der Loo, Van Elsuwege and Petrov, "The EU-Ukraine Association Agreement: Assessment of an Innovative Legal Instrument", European University Institute Working Papers (Department of Law), 2014/09.

7. Ukraine: EU report notes continued implementation of the reform agenda though challenges remain, <[ec.europa.eu/commission/presscorner/detail/es/ip\\_20\\_2259](http://ec.europa.eu/commission/presscorner/detail/es/ip_20_2259)>. See Association Implementation Report on Ukraine 2021, Joint Staff Working Document, Brussels, 22 July 2022, SWD(2022)202 final. The Report listed quite extensive issues where Ukraine is expected to improve its performance in implementing the EU-Ukraine Association Agreement, mainly in the fields of justice, rule of law and the fight against corruption. See <[ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_4706](http://ec.europa.eu/commission/presscorner/detail/en/ip_22_4706)>.

8. 6th UCEP Monitoring Report "Ukraine and the Association Agreement. Implementation Monitoring 2014-the first half of 2021", <[www.kas.de/en/web/ukraine/single-title/-/content/ukraine-and-the-association-agreement-implementation-monitoring-2014-the-first-half-of-2021](http://www.kas.de/en/web/ukraine/single-title/-/content/ukraine-and-the-association-agreement-implementation-monitoring-2014-the-first-half-of-2021)>.

policies (e.g. Eastern Partnership),<sup>9</sup> and/or as a party to a framework association agreement with the EU, and becomes a victim of a military or hybrid invasion,<sup>10</sup> it may expect extensive political, economic, security, and humanitarian support from the EU and its Member States. Such support may indeed include the recognition of a membership perspective if the country wishes to accede, and ensuing EU engagement to make it happen. Of course, the aggression would have to be of such a nature that it undermines the sovereignty of the State concerned, and its European integration objectives.

The notion of a more favourable approach towards Ukraine's accession was indeed evoked by several Member States early in the process.<sup>11</sup> But it has also triggered negative reactions, both in the EU, and among other candidates for membership. Some Member States have promptly rejected any "fast-track accession" on grounds that formally there is no such special procedure in EU law, and that the watering down of entry conditions it could entail – which some EU governments might agree to for other reasons – would be dangerous for the Union,<sup>12</sup> as well as problematic for its relations with other applicants. Indeed, candidate States from the Western Balkan have warned against the proposition that Ukraine should get accession priority, as that would (further) undermine their own accession perspective. As is well known, some of the applicant countries from the region experienced bloody civil wars and military intrusion by third countries, and have since, at least in some cases, made considerable efforts to be able to join, though without always getting much support from the EU in return.

9. Further on Eastern Partnership, see e.g. <[www.eeas.europa.eu/eeas/joint-communication-eastern-partnership-policy-beyond-2020-reinforcing-resilience-%E2%80%93-eastern\\_en](http://www.eeas.europa.eu/eeas/joint-communication-eastern-partnership-policy-beyond-2020-reinforcing-resilience-%E2%80%93-eastern_en)>; <[www.consilium.europa.eu/en/press/press-releases/2020/05/11/eastern-partnership-policy-beyond-2020-council-approves-conclusions/](http://www.consilium.europa.eu/en/press/press-releases/2020/05/11/eastern-partnership-policy-beyond-2020-council-approves-conclusions/)>.

10. A hybrid invasion can be conducted by military as well as by non-military means, but still threatens the sovereignty and territorial independence of a State (cyber-attacks leading to a termination of government control and/or establishing of non-recognized entities, and others).

11. See the letter of the Polish and (then) Slovenian Prime Ministers sent the day before the start of Russia's invasion of Ukraine to European Council President Charles Michel, available at <[www.gov.si/en/news/2022-02-23-joint-letter-of-slovene-and-polish-prime-minister-on-the-ukrainian-european-perspective/](http://www.gov.si/en/news/2022-02-23-joint-letter-of-slovene-and-polish-prime-minister-on-the-ukrainian-european-perspective/)>; and the subsequent declaration of 28 Feb. 2022 of the respective Presidents of Bulgaria, the Czech Republic, Estonia, Latvia, Lithuania, Poland, Slovakia, and Slovenia, available at <[www.president.pl/news/open-letter-by-presidents-in-support-of-ukraines-swift-candidacy-to-the-european-union,49584](http://www.president.pl/news/open-letter-by-presidents-in-support-of-ukraines-swift-candidacy-to-the-european-union,49584)>. See also: <[www.euractiv.com/section/politics/short\\_news/poland-slovenia-lithuania-say-ukraine-deserves-eu-candidate-status/](http://www.euractiv.com/section/politics/short_news/poland-slovenia-lithuania-say-ukraine-deserves-eu-candidate-status/)>.

12. See e.g. <[www.reuters.com/world/europe/there-is-no-fast-track-procedure-eu-membership-dutch-pm-says-2022-03-10/](http://www.reuters.com/world/europe/there-is-no-fast-track-procedure-eu-membership-dutch-pm-says-2022-03-10/)>; <[www.theguardian.com/world/2022/mar/10/western-europe-leaders-rebuff-ukraine-fast-track-eu-membership-appeal](http://www.theguardian.com/world/2022/mar/10/western-europe-leaders-rebuff-ukraine-fast-track-eu-membership-appeal)>; <[www.politico.eu/article/netherlands-ukraine-eu-membership-zelenskyy-putin/](http://www.politico.eu/article/netherlands-ukraine-eu-membership-zelenskyy-putin/)>.

The other option for Ukraine (and Moldova and Georgia) is the “classic accession” process. Like any other candidate country, it will be expected to fulfil the Copenhagen criteria and, consequently, to apply the whole EU acquis covered by the 35 or more chapters of accession negotiation. Judging from official statements, this is indeed the approach that the EU institutions and Member States appear to favour. Having recalled the provisions of Article 49 TEU, and the accession conditions based on the Copenhagen criteria, the Commission’s Opinion underlined that the latter “ha[d] been prepared following a methodology similar to that used in previous Commission Opinions”. In the same vein, the European Council Conclusions emphasized that “[t]he progress of each country towards the European Union will depend on its own merit in meeting the Copenhagen criteria”.<sup>13</sup> It is also noticeable that, while recalling that progress in the accession depends on the candidate’s fulfilment of the Copenhagen criteria, the European Council underscored that “the EU’s capacity to absorb new members”, a consideration whose significance has steadily increased in the EU enlargement rhetoric since 2004, would have to be “taken into consideration”.<sup>14</sup>

Although EU institutions and Member States have risen to the occasion by reacting remarkably swiftly and positively to the applications, they also remain adamant generally about applying the established accession methodology to the new applicants too, and the legal adaptation this entails to entrench membership in all its dimensions in their systems. That said, it is arguable that the application of the classic methodology will also have to be adapted, and supplemented, as it has indeed been done in each enlargement episode, to take account of the specificities of each case. The ongoing war has morphed into an attrition campaign, with protracted impact both on Ukraine and the entire EU. Ukraine’s ability to meet the accession conditions is being further depleted every day of the devastating aggression, and will thus hinge on the country’s overall reconstruction. It will in turn depend on, *inter alia*, the long-haul support that Ukraine gets from the EU in this major undertaking. The more assistance the EU provides, the more it will be normatively and effectively in a position to demand the scrupulous observance of the accession conditions. While the magnitude and the specific nature of the efforts needed to reconstruct Ukraine require ad hoc adjustment of the accession methodology (also to meet the specific needs of Moldova and Georgia, as collateral victims of the war), the process should also trigger a wider, and salutary recalibration of the EU “pre-accession strategy”, which has shown its limits and weaknesses over the years. Ukraine’s application (as well as that of Moldova and Georgia) is indeed a major incentive for the EU to design a

13. European Council Conclusions, Brussels, 24 June 2022, EU CO 24/22, pt 14.

14. Ibid.

“pre-accession strategy 2.0”, *inter alia* so as better to prepare candidate States both to meet the accession criteria and to operate as well-functioning Member States in the future. The new strategy should also allow a country like Ukraine to get back on its feet as a post-conflict society, something the EU and Member States have proved not to be particularly strong at in various candidate countries of the Western Balkan; the EU needs to improve this strategy, in order to be able to fulfil its promises, and secure peace in Europe.

#### *Peace deal as a decisive factor for Ukraine’s Accession to the EU*

In the meantime, and equally crucially, Ukraine’s progress on the accession path will inevitably depend on the outcome of the war, and the terms upon which hostilities will eventually cease, and the time it will take for them to end. These elements, among others, will determine the geographical borders of Ukraine as future Member State, and could affect its sovereignty on issues related to its security and ability to join international organizations like the EU, let alone NATO. Several scenarios could be envisaged at this stage, acknowledging however that the evolution of the situation remains highly unpredictable.

In a first scenario, Russia could face complete military defeat, followed by a regime change. In this situation, a peace settlement could lead to the liberation of all Russian-occupied areas of Ukraine, including Crimea and the territories of so-called “Lugansk and Donetsk Peoples’ Republics” in the East (LDPR). From the perspective of the accession process, that would be the best outcome for Ukraine and the EU. Such a peace deal would restore Ukraine sovereignty within its internationally recognized borders and lay the grounds for the fastest possible reconstruction, and the finalization of its accession to the EU. The EU (and some other world powers, as well as international organizations) could then provide the necessary financial and technical assistance to support Ukraine’s reconstruction, with the Copenhagen criteria and the EU *acquis* operating as general compass.

The second scenario would see Ukraine win convincing military successes while Russia gets increasingly crippled by the growing costs of the war and of the international sanctions. In this situation, the Russian authorities might agree to a compromise peace settlement that envisages the de-occupation of Ukrainian territories invaded since 24 February 2022, but not those of Crimea and of the LDPR. This option would not imply any formal recognition of the territorial status of those latter entities. Simply this issue could be postponed to a later stage in the settlement. This scenario would come close to the first one in terms of its positive effects on Ukraine’s reconstruction and accession prospects. However, it would inevitably raise sensitive questions as to how

Ukrainian nationals, companies, goods, and services from those territories should be treated in EU law, in the event of Ukraine's membership of the EU, and also beforehand in the context of the application of the Association Agreement. Regarding companies, their registration and seat of operation would be essential so as to determine the legal regime applicable to them. However, the status of Ukrainian nationals residing in Crimea and LDPR would remain problematic. Most of them have acquired Russian citizenship, and could rely on their Ukrainian passport to use (or abuse) their rights as EU citizens. In this regard, the experience of Cyprus could provide some insights in possibly handling (some of) these intricate issues.<sup>15</sup> In any event, the latter should not constitute obstacles to Ukraine's membership; EU Member States would otherwise be rewarding Russia's aggression.

In a third scenario, Ukraine and Russia would face a military draw and subsequently reach a "status quo" deal, leaving already occupied Ukrainian territories under Russian control. Most likely that would imply the indefinite "freezing" of the conflict. As a result, Ukraine would face a permanent security threat on its borders and lose access to the Azov Sea, while its Black Sea ports would remain blocked, or at least de facto controlled by the Russian Navy. Thereby, Ukraine's export of agricultural products and other goods would probably continue to face a plethora of obstacles in terms of reaching the EU and international markets. This option would significantly complicate Ukraine's accession process. The accession negotiators would then have to consider establishing specific derogations to the application of the EU *acquis* and membership rights within the internationally recognized territory of Ukraine.

The fourth scenario would be a complete military defeat of Ukraine, potentially leading either to the loss of all or most of its territory to Russia, or its partition into several zones/peoples' republics, as occurred in some occupied European countries in the early 1940s. In the worst-case scenario, the Ukrainian Government could be forced to go into exile, or move from Kyiv to another regional centre like Lviv, while the Ukrainian resistance would continue the fight within occupied territories. This scenario would severely complicate Ukraine's accession prospects in both legal, economic and political terms, at least in the short and medium term.

All those scenarios remain highly speculative since the terms of any settlement remain to be decided, on the battlefield. For now, top Ukrainian officials have ruled out any prospect of a peace deal with the Russian

15. Skoutaris, "The application of the *acquis communautaire* in the areas not under the effective control of the republic of Cyprus: The Green Line Regulation", 45 CML Rev. (2008), 727 et seq.; Hoffmeister, *Legal Aspects of the Cyprus Problem: Annan Plan and EU Accession* (Martinus Nijhoff Publishers, 2006).

Federation, other than on the basis of the latter's complete military defeat. Of course, such a defeat is the most desirable option both for Ukrainians and for the international community.<sup>16</sup> The Russian Federation has, however, embarked upon a war of attrition in the hope of overcoming Ukraine's resistance and international assistance, while its nuclear blackmail has thus far succeeded in preventing further engagement to support Ukraine. This ultimately suggests that the more sombre scenarios, especially the last one, remain plausible. In any outcome, the options we discussed show that the objectives of the Ukraine-Russia settlement will have a considerable impact on Ukraine as a State, on the pace and nature of its accession to the EU, and will require commensurate engagement from the EU and its Member States to make it possible.

#### *Supplementary initiatives to prepare Ukraine's Accession to the EU*

Even if generally governed by standard rules, the preparation of Ukraine's, Moldova's and Georgia's membership will not be an accession process *comme les autres*. As joining the EU will be a long and demanding journey, further initiatives are therefore needed, and are indeed being proposed, to anchor these countries firmly in a broader framework of European cooperation, as part of their accession preparations.<sup>17</sup> Obviously, the return of war in Europe is requiring a fundamental rethink not only about how the EU relates to these three countries, but also how it is interacting with other European States, be they candidates for membership or not.

A recent initiative of this kind is the European Political Community (EPC) proposed by French President Macron in May 2022, as France was holding the presidency of the EU Council.<sup>18</sup> According to a non-paper prepared prior to the June European Council, the EPC would be "open to European States that share a common set of democratic values, whether or not they are members of the Union and regardless of the nature of their current relationship with the European Union". Its overall purpose would be to "strengthen the political, economic, cultural and security links between its members" and to "provide a forum for coordination, decision-making and cooperative projects to respond in a concrete way to the challenges facing all countries on the European

16. Tisdall, "As Putin's war spreads panic across Europe, Ukrainians must fear a stab in the back", <[www.theguardian.com/world/2022/aug/14/putin-war-europe-ukraine-west](http://www.theguardian.com/world/2022/aug/14/putin-war-europe-ukraine-west)>.

17. Emerson and Blockmans, "The New Agenda for the EU's Enlargement and Neighbourhood Policies", CEPS Paper, available at <[www.ceps.eu/ceps-publications/the-new-agenda-for-the-eus-enlargement-and-neighbourhood-policies](http://www.ceps.eu/ceps-publications/the-new-agenda-for-the-eus-enlargement-and-neighbourhood-policies)>.

18. Speech by Macron at the closing ceremony of the Conference on the Future of Europe, 9 May 2022, <[presidence-francaise.consilium.europa.eu/en/news/speech-by-emmanuel-macron-at-the-closing-ceremony-of-the-conference-on-the-future-of-europe/](http://presidence-francaise.consilium.europa.eu/en/news/speech-by-emmanuel-macron-at-the-closing-ceremony-of-the-conference-on-the-future-of-europe/)>.

Continent” covering “foreign and security policy issues, climate change and the supply of energy and other raw materials, food security, infrastructure development and interconnection, mobility, migration, the fight against organized crime, relations with other geopolitical actors”.<sup>19</sup>

In a similar vein, the President of the European Council, Charles Michel, put forward the idea of a European Geo-political Community that could span “from Reykjavik to Baku or Yerevan, from Oslo to Ankara”,<sup>20</sup> while Italy’s former Prime Minister Enrico Letta suggested the creation of a European Confederation.<sup>21</sup> All those initiatives have in common the idea of establishing a broader European community comprising EU Member States, candidate countries, and other European countries with and without aspiration to join the EU in the future (the UK and Turkey). They partly recall the “European Conference” which the European Council established in 1997, as “a multilateral forum for political consultation, intended to address questions of general concern to the participants and to broaden and deepen their cooperation on foreign and security policy, justice and home affairs, and other areas of common concern, particularly economic matters and regional cooperation”.<sup>22</sup> The Conference first consisted of EU States and candidate countries, and notably Turkey, and was subsequently opened, on an *ad hoc* basis, to other European neighbours, including Ukraine, Moldova and the EFTA States,<sup>23</sup> before falling into oblivion in 2001. In many respects, the current proposals also echo what Article 8 TEU, introduced by the Treaty of Lisbon, mandates the EU itself to establish, namely “an area of prosperity and good neighbourliness, founded on the values of the Union and characterized by close and peaceful relations based on cooperation ... with the possibility of undertaking activities jointly.”<sup>24</sup>

19. Non-paper European Political Community, <[www.rijksoverheid.nl/documenten/publicaties/2022/06/17/non-paper-european-political-community](http://www.rijksoverheid.nl/documenten/publicaties/2022/06/17/non-paper-european-political-community)>.

20. Speech by President Michel at the plenary session of the European Economic and Social Committee, 18 May 2022, <[www.consilium.europa.eu/fr/press/press-releases/2022/05/18/di-scours-du-president-charles-michel-lors-de-la-session-pleniere-du-comite-economique-et-social-europeen](http://www.consilium.europa.eu/fr/press/press-releases/2022/05/18/di-scours-du-president-charles-michel-lors-de-la-session-pleniere-du-comite-economique-et-social-europeen)>.

21. Letta, “A European Confederation: a common political platform for peace”, 25 April 2022, <[progressivepost.eu/a-european-confederation](http://progressivepost.eu/a-european-confederation)>.

22. Conclusions, European Council, Luxembourg, 12–13 Dec. 1997, available at <[www.consilium.europa.eu/media/21114/luxembourg-european-council.pdf](http://www.consilium.europa.eu/media/21114/luxembourg-european-council.pdf)>.

23. “EU Response to the 11 September: European Commission action”, <[ec.europa.eu/commission/presscorner/api/files/document/print/en/memo\\_02\\_53/MEMO\\_02\\_53\\_EN.pdf](http://ec.europa.eu/commission/presscorner/api/files/document/print/en/memo_02_53/MEMO_02_53_EN.pdf)>.

24. On the potential scope and meaning of Art. 8 TEU for EU external policy, see different views in Van Elsuwege and Petrov, “Towards a new generation of agreements with the neighbouring countries of the European Union? Scope, objectives and potential application of Article 8 TEU”, 36 EL Rev. (2011), 688–703 and Hillion, “The EU neighbourhood competence under Article 8 TEU” (2013) *European Policy Analysis* 3, 1–8.

The European Council has seemingly backed the French initiative at its June 2022 meeting.<sup>25</sup> The details of the EPC, both in terms of aims, methodology and scope, are still being worked out, hopefully taking account of some of the criticisms that have already been expressed. There has indeed been some suspicion about the ultimate purpose of the initiative. The fear among some candidate countries is that the EPC could either undermine, or even be implicitly conceived as an alternative to their ultimate EU membership, the way the European Neighbourhood Policy and Eastern Partnership did before. The fact that the EPC was referred to in the conclusions of the June European Council under the heading of “Wider Europe”, which is now effecting a remarkable comeback in the EU taxonomy, may have done little to assuage those fears. It will be recalled that the notion “Wider Europe” emerged in the context of the then upcoming “big bang enlargement” of 2004 and was at the time conceived of as accompanying the latter as an alternative policy framework to (further) accession.

That said, the French non-paper on EPC importantly underlined that “[t]he European Political Community would not be an alternative to EU membership and would not be a substitute to the enlargement process. For European States wishing to join the European Union, it would, on the contrary, allow for the strengthening of links with EU Member States prior to accession”.<sup>26</sup>

Calibrated in such a way, the EPC could indeed complement, and boost, the EU enlargement preparations both on the side of the candidates and that of the EU. By involving representatives of the candidate countries “in coordination, decision-making and cooperative projects to respond in a concrete way to the challenges facing all countries on the European Continent”, the EPC could help restore the attractiveness of the EU, badly damaged by years of neglect and unfulfilled promises towards applicants from south-east Europe, and in turn its transformative power. This form of inclusion and of socialization is certainly needed, to enrich the accession-focused relations between the EU and candidate countries which, understandably, tend to be overly dominated by the technicalities of the candidates’ absorption of the EU *acquis*. The EPC could in particular offer a forum for candidate countries and EU Member States also to work together and solve lingering disputes that have hampered the accession process, and strengthen the broader process of European integration (e.g. between Greece and Bulgaria on the one hand, and North Macedonia on the other, or between Poland, Hungary and Ukraine).

Furthermore, participation in the EPC could open further opportunities for candidate countries’ involvement in a variety of forms of pan-European cooperation including both EU and non-EU States, which have become ever

25. European Council Conclusions, Brussels, 24 June 2022, EU CO 24/22.

26. Ibid.

more critical in the wake of Russia's aggression. For countries like Ukraine, Moldova and Georgia, the EPC could boost the European cooperation in foreign policy, security and defence, building on the relevant provisions of their association agreements while exploring additional collaborations with EU initiatives and mechanisms, like PESCO and Strategic Compass,<sup>27</sup> or even through Article 42(7) TEU, whose potential external dimension remains unexplored.

### *Concluding remarks*

Russia's invasion of Ukraine constitutes an unprecedented challenge for the European integration project. With remarkable speed, the EU welcomed Ukraine's bid for membership in appreciation of its extraordinary resistance efforts. It thus offered a special treatment to a country defending common values on the battlefield, by opening its door without sacrificing the Copenhagen criteria and the established policy of conditionality. The latter remains critical, though not flawless, in entrenching the attributes of membership in any candidate State's structures. The EU has also had to be creative and, consequently, to offer complementary solutions for (new) candidate countries that are not ready as yet to meet all the accession criteria, especially in a time of intensive warfare. The EPC is a case in point. While it remains to be fully articulated, this initiative could bring candidate countries, EU Member States, and non-EU countries closer in their efforts to coalesce different forms of political, economic and security cooperation that are critical in order to respond to existential threats on the European continent. Whether this initiative will live up to expectations and resolve fears of some of its potential participants remains to be seen. To be sure, Ukraine should play an active part in its development – insofar as it practically can in the current circumstances – as part of its membership preparations and as a leading contributor to the post-war renewal of the European integration process.

Today's geopolitical turbulences also require fundamental change in several traditional EU domestic and external policies, including primarily the EU enlargement process which Ukraine's struggle brought back on top of the EU agenda. Back in 2004-2005, enlargement was a potent framework to trigger

27. PESCO stands for "Permanent Structural Cooperation". It was established on 11 Dec. 2017 under the framework of the CSDP, and offers a legal framework for joint planning and investment in shared capability projects in the area of security and defence (Council Decision (CFSP) 2017/2315 (O.J. 2017, L 331/57-77). Strategic Compass is another EU initiative under the CSDP to offer specific actions to strengthen the EU's security and defence: EU Council, "A Strategic Compass for Security and Defence – For a European Union that protects its citizens, values and interests and contributes to international peace and security", 21 March 2022, 7371/22.

wide-scale Europeanization of ex-communist countries from central and eastern Europe, including some former Soviet republics. In 2022, EU accession is being applied to boost the war effort of pro-European post-Soviet countries, and to enhance the potency of European common values when they are defended on the battlefield. It remains to be seen how the apparent tectonic shift in the EU approach, i.e. from a mostly “technocratic” accession exercise in recent years, to a value-based “accession through war”, will play out in the longer term.

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