

ELF Study 5

Designed in Brussels, Made in Ukraine

Future of EU-Ukraine
Relations

Edited by
Dr Maria Alesina



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Published by the European Liberal Forum. Co-funded by the European Parliament.

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Page layout: Cheshire Typesetting Ltd, Cuddington, Cheshire

Editor: Dr Maria Alesina

ISBN: 987-2-39067-055-1 / 9782390670551

ISSN (print): 2791-3880

ISSN (online): 2791-3899

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Foreword

Olha Stefanishyna

Deputy Prime Minister of Ukraine

for European and Euro-Atlantic integration

Ukraine applied for EU membership in the midst of fighting for its very existence as a state and nation. Day after day, we watched our country being destroyed and entire cities turned into dust. Russia ruthlessly tore down the state we had built, and our European dreams seemed to vanish with it. In that critical moment, on the 5th day of the full-scale invasion, President Volodymyr Zelensky made a historic decision to apply for EU membership. This step had been prepared by a solid track record of democratic development and the unbeaten commitment of Ukrainian citizens to democratic values and freedoms. Also, it showed the strength of our faith in Ukraine and the EU. For me personally, the membership application was also essential as a record of the tremendous progress we have made in transforming the country over the last decade.

Of course, no one could say at that time what the outcome of Ukraine's application would be. In several months, we succeeded in filling out thousands of pages of EU questionnaire to receiving the candidate status. It would be impossible without Ukraine's resilience and determination, but also without true EU leadership that corresponded to the significance of this historical moment. The EU was built as a project for spreading peace, democratic values, and economic growth, and today the EU enlargement policy is again seen from this geopolitical angle. Ukrainians know well that the EU is much more than a market or regulations; it, first of all, is about values. And we have to do everything what it takes to protect these values.

European integration, reforms in times of full-scale war – all this seemed unthinkable. And yet, as Ukrainian Armed Forces fight the Russian invasion, the Ukrainian Government, Parliament, and civil society representatives have been mobilized around reform agenda, preparing the country for victory.



The Government has launched the massive task of self-screening of implementation of EU acquis into Ukrainian legislation. We understand that the accession processes will not be easy, but it will provide the necessary strategic framework for the post-war reconstruction and recovery of the country. That is why we believe it is essential to start the negotiations at the end of 2023. This will be the last political decision on behalf of the EU leaders that will pave the way for structural transformations of Ukraine as we jointly rebuild the country and strengthen the Union.

Ilhan Kyuchyuk MEP

ALDE Party Co-President

Since February 2022, Europe remains firm in its support to Ukraine, its citizens, and political leadership against Putin's unprovoked military aggression. The ALDE party and liberals in Europe have been unyielding when it comes to imposing strong, meaningful, tactical, and tangible sanctions; we have urged the European governments and partners to secure and step up their military and financial support to Ukraine and its people. It is a choice we made resolutely in the beginning of the invasion and one that we will defend until Putin puts an end to the hostilities and atrocities against the population of Ukraine.

For us, European liberals, the war in Ukraine is not a mere conflict between two states, it is a battle between democracy and autocracy; between freedom and brutality; between looking forward and grasping to the past. The ALDE Party has and will always stand on the side of democracy, so it comes naturally that we stood to do anything in our power to support Ukraine and its people in this fight, helping it to rebuild and create its future, within our shared Union of values.

The book you hold in your hands takes a step further from the dark angle of the Russian invasion. It discusses the shift in paradigm with regards to Ukraine's EU accession, while providing an unbiased look at the building blocks and challenges that the country needs to work on. It takes a dive into Ukraine's reconstruction the rebuilding of the education sector and support to the cultural heritage, while taking a step further to the opportunities of digital transition, market integration to the EU and the ecological consequences that need to be tackled. It marks the way forward to Ukraine's potential for a homemade European success story.



It is clear that we will need to support the country in order to provide a strong voice for Ukraine in Europe and the world. But I am continuously inspired by the courage and resilience of Ukrainians – truly the bravest people in the world. Their determination and spirit are a testament to why they belong in the EU – and the contents of this book lays down the roadmap to achieving that.

Dr Maria Alesina European Liberal Forum

UKRAINE AND THE EU: COMMON CHALLENGES, SHARED VALUES

The dramatic events of February 2022 have started a new era in the history of Europe, Ukraine, and EU–Ukraine relations. For Europe as a whole, it signified the shocking return of the ‘continent of peace and prosperity’ to the seemingly distant memories of global war. For Ukraine, it marked the final break from the past, an ultimate moment of truth, a one-way ticket towards the civilised democratic world. For both, it came as a bitter reality check, reminding all of the immense price of true sovereignty and freedom.

Russian aggression, Ukraine’s resistance, and Europe’s support have also set into motion a new phase of EU–Ukraine relations. The political, historical, and sociocultural distance between the two shrunk in the first weeks and months of the full-scale invasion. The EU’s unequivocal political and human empathy with the attacked neighbour and Ukraine’s proactive position in this decisive moment have resulted in granting of the candidate status to Ukraine – a step which otherwise would have happened years later, if ever.

The future progression of these relations lies now somewhere in between Ukraine’s determination to join the EU and the latter’s hesitation, if not resistance to embrace new members. Ukraine’s forthcoming reconstruction and EU accession negotiations will be the new chapters which are yet to be filled in with details and practicalities.

While at this point there are still more questions than answers, one thing is undeniable. With its fierce resistance to the Russian attack, Ukraine has not only secured its statehood and identity but also cemented its place in the European family of free democratic countries. No support from abroad would suffice if Ukraine itself was not ready or

willing to embrace the reality, take on this new role, and pay the price that comes with it.

Since the beginning of the full-scale invasion, it has often been repeated by politicians on both sides that Ukrainians are shielding Europe from the deadly threat of Russian aggression and expansionism. Yet, more than a physical attack alone, this fight is against the danger more subtle yet no less devastating, the one against which no NATO forces can fight – that of authoritarianism. It can grow inside people’s minds and hearts irrespective of political borders. It can become mystically attractive, unless its destructive consequences are clearly understood. At a cost of their lives, Ukrainians have been showcasing the price of illusions and ignoring the red flags when it comes to dealing with illiberal actors.

Listening to Vladimir Putin’s pre-invasion address to Russians on 21 February 2022 made me, Ukrainian, feel my blood freezing in my veins. The coldness and boldness with which the self-assured dictator was denouncing the identity, statehood, legitimacy, the very past, present, and the future of an independent country of 45 million citizens was astonishing. No less astonishing was the realisation that most of the civilised world was de facto ready to accept that Kyiv would be ‘taken in three days’. On the second day of the full-scale war, President Zelenskiy addressed the nation: ‘Do you see anyone rushing to help us? I don’t.’ This was the chilling moment when all Ukrainians irreversibly grew up, individually and collectively, and stood up to the challenge of defending themselves and their freedom.

How come a young state – a flawed, imperfect, transitional democracy ‘in the making’ – became Europe’s frontliner of freedom? Thirty years of much-sought independence was enough to make

the checks and balances of authoritarianism and democracy self-evident to Ukrainians. Being located between the EU and the increasingly totalitarian, aggressive, and past-oriented Russian Federation made this choice clear and sound. From trying to block Ukraine's Association Agreement with the EU to the illegal annexation of Crimea and occupation of Donbass to the full-scale war of aggression and mass murders of Ukrainian civilians, Russia's violence does nothing else but strengthen Ukraine's determination to join the free and democratic world, once and for all.

FORWARD IS THE ONLY WAY

Now, that the illiberal forces are growing across the world, it is the time for Europe to stay united and strong in its determination to protect the best it has – human dignity and freedom. A peaceful and stable future of free Europe is thus impossible without Ukraine in it. The threat of totalitarianism, embodied today in the Russian aggression, is as much Ukraine's challenge as it is European. Both Ukraine and the EU find themselves between a rock and a hard place, when the old ways are not working anymore while the new ones are yet to be invented, established, and solidified. After the ground-shaking year of 2022, for Ukraine as for Europe as a whole, there is no way back – only forward.

For Ukraine, the momentum has been growing for fully implementing the reforms needed to join the European club. For the past decade, relations with the EU have been the key accelerator of Ukraine's democratic transformation, from signing the Association Agreement in 2014 to receiving the EU candidate status in 2022. As a young state, Ukraine is seeking to catch up with its Western partners on all possible fronts at once – politically, socially, economically. Not having the luxury of a centuries-long progressive democratisation, the state and society evolve not by decades but by years, trying to find a place in the world while building up an authentic yet modern identity.

This is not an easy task, and Ukraine is not executing it flawlessly. Corruption and lack of transparency remain the elephant in the room. Yet the progress is evident, because the goal is clear and unambiguous. There is only one way, which means towards the West, embodied, above all, by the EU. The price for the Ukrainian state and society is as high as it gets, which leaves no room for a setback and pushes the society to consolidate its efforts in this direction. This calls for the EU to grasp the opportunity and foster Ukraine's further transformation.

The EU, too, is pushed to adopt new approaches – more swift, more decisive, more strategic and farsighted. In times of intensified geopolitical competition, it needs to focus on a two-sided coin: strengthening its security as well as embracing new like-minded members. Sticking to the outdated ways, inward-looking reasoning, and bureaucratic comfort zone will cost the EU international weight and internal credibility. Unprecedented times require decisive actions and visionary solutions.

The EU's unified political stance and distinct actions that were taken in reaction to the Russian full-scale attack on Ukraine set the course in the right direction. The challenge is, however, to keep the unity and back it up with practical solutions that will allow the EU to adequately respond to the new reality and mark out its course towards the future. While enlargement is often being seen as a stalled project, the EU will need to find new ways to effectively integrate new members, with the staged accession approach being the most viable option on the table. This will require much-needed reforms of the EU itself that can unlock the geopolitical potential of the bloc for decades to come.

In the unprecedented post-February 2022 context, the relations between the EU and one of its largest neighbours thus made a quantum leap into the future, fuelled by a strong sense of geographical and human closeness, shared values, and common challenges. There will be no better occasion for the EU to demonstrate its consistency, reliability, and decisiveness than in building its relations with Ukraine in the aftermath of 2022.

UKRAINE POST FEBRUARY 2022: POLICY POINTERS FOR THE EU

One year after the granting of EU candidate status to Ukraine, it is time to outline a more detailed vision for the foreseeable future and reflect on the ways to make it constructive and increasingly beneficial for both parties. This study by the European Liberal Forum (ELF) covers various aspects of the bilateral relations in a short- to mid-term perspective. The contributions of this collective edited volume bring up new opportunities, approaches, loops through which the EU and Ukraine can become progressively closer, up to the full integration. With a view of co-shaping a shared vision of the future, the lineup of authors and reviewers includes academics, experts, former and current politicians and officials from both Ukraine and the EU. Their insights aim to provide EU policymakers with recommendations on

how to best design the cooperation and integration process in the coming years so that it brings palpable results and maximises mutual benefits along the way.

Before focusing on the specifics, there are several umbrella factors to acknowledge and keep in mind when we speak about how the EU can best approach Ukraine in the coming years.

First, recovering the country from the consequences of the devastating war is a long-term and energy-consuming project. It will take decades, alongside immense efforts, resources, and creativity on the side of both Ukraine and its partners. This obliges all the sides involved to begin the reconstruction as soon as possible without waiting for the war to end, and, most importantly, be practical and strategic in ensuring that this process is aligned with a long-term strategy. The key objective of the reconstruction is not simply to rebuild what was destroyed – this is not only often impossible but also not necessarily optimal. Instead, the ultimate goal is to build a renewed country, one which corresponds to the vision of the European future that Ukrainians are fighting for. Post-war recovery and EU integration are the two parallel and closely interrelated processes that must mutually reinforce and accelerate one another. The EU's expertise and guidance will be key in designing and implementing the recovery plan, in full alignment with the bloc's own technical standards and long-term objectives and transitions.

Second, while the Ukrainian government will be the key executor of reforms required for the EU accession, its actions will be driven by the pressure from the two key sources: international partners, with the EU being the main one, and Ukraine's own civil society. On the one hand, Ukraine's political course as well as the need for funds and support to rebuild the country will make its political elites highly alert to the international feedback. This is the time for strict conditionality and meticulous scrutiny, as it will have real power over implementing long-overdue reforms, such as those related to the rule of law and the fight against corruption.

On the other hand, Ukraine's government will be scrutinised by its own society, which has grown stronger, fiercer, and more proactive with regards to not tolerating the lack of transparency or deviation from the national interests. The entrepreneurial, collaborative, bottom-up character of modern Ukrainian society was demonstrated clearly during both 2014 and 2022, driving resistance to the external aggressor. The growing and blooming civil

society is a strong factor influencing the political processes inside the country and must by no means be underestimated as the EU's reliable partner in relations with Ukraine.

Third, the progressive deepening of the bilateral relations with Brussels and other EU capitals all the way until full accession is the main strategic task on Ukraine's political agenda. This has to be as between equals. Changing one 'older brother' for another one is not a viable foreign policy option, especially for a country going through a devastating war. If Ukrainians are not yet seen as equal partners by the EU, they are ready to do what it takes to change this. Reaching this political objective will be one of the main drivers for reforms and transformations – pushed, once again, from the bottom up. This also implies the mindset of mutual benefit and equal give and take, frequently claimed by President Zelenskyy. This striving for equality implies not only receiving support and aligning with what is expected by Brussels but also contributing with one's own resources, insights, unique experience, and potential.

OVERVIEW OF THE STUDY

These cross-cutting factors are the red threads of ELF Study on the future of the EU–Ukraine relations after 2022. It is divided into three parts, each consisting of four to six papers, that cover the key dimensions of EU–Ukraine cooperation from a mid-term perspective: EU accession process, post-war recovery, and underexplored domains for partnership in which Ukraine can benefit the EU. They address the most relevant and/or representative issues and aim to suggest policy solutions that the EU can set into motion to foster these processes.

The first part covers the core aspects of the bilateral relations and the new priorities and impediments that arose within them since February 2022. Dr Laure Delcour (Paris Sorbonne, College of Europe) discusses how the granting of the EU candidate status to Ukraine has addressed a longstanding issue of the finalité of EU–Ukraine relations, while bringing up even more uncertainty about the process of getting there. Dr Marija Golubeva (Robert Bosch Academy, Former Minister of the Interior of Latvia) continues the topic by analysing the diverging expectations on the timing of Ukraine's EU accession in European capitals and in Kyiv, and suggests the staged integration approach. Dr Oksana Huss (University of Bologna) analyses the determinants of the successful anti-corruption measures in Ukraine and provides recommendations on how

the EU can foster them. Lena Andersson (Balkans Analysis Group) and Nataliia Bovkun (ELF Research Fellow) tackle the major issue of the Rule of Law reforms and present new setbacks as well as opportunities that appeared after 2022. Dr Oleksandra Bulana (Ukrainian Centre for European Policy) suggests the steps to facilitate Ukraine's integration into the Single Market, especially considering the country's current economic vulnerability. Ganna Tsarenko (Kyiv School of Economics) discusses the unfolding of the decentralisation reform in Ukraine before and after the full-scale war and the impact of the local self-governance on the democratisation process in Ukraine.

The second part focuses on the interrelated processes of post-war recovery and EU integration and how to make them mutually reinforce one another. Brookes Newmark (Former Member of the UK Parliament and Former Minister for Civil Society) provides an overview of the physical and psychological damage of the Russian aggression in Ukraine and discusses the legal basis and possible procedures to use the Russian state assets to pay for the reconstruction without waiting for the war to end. His analysis is complemented with policy input and recommendations from Renew Europe MEP Vlad Gheorghe (Romania). Paper by Sofiia Schevchenko analyses large-scale environmental damage of the Russian aggression and the need for developing a sustainable recovery plan for Ukraine. Gorana Barišić-Bačelić (Fortress of Culture Šibenik), Dr Vesna Pusic (Former Minister of Foreign and European Affairs of Croatia), and Olena Zabrodska (ELF Research Fellow) argue about the centrality of culture in the post-war reconstruction and EU accession processes, referring to the experience of Croatia. Last but not least, Sophie Pornschlegel (European Policy Center) discusses the central role of Ukrainian civil society in the country's post-war reconstruction and EU accession and provides

recommendations to the EU on how to further strengthen this key actor and establish systemic cooperation with it.

The third part of the study sheds light on the domains and sectors which present a significant potential for Ukraine–EU integration, not least by allowing Ukraine to contribute to the EU and establish itself as an equal partner in this process. Ihor Samokhodsky (Better Regulation Delivery Office) brings up the immense potential of Ukraine's booming digital industry not only for the country's recovery and EU integration but also as a source of insights and innovative solutions for the EU's digital and green transition. Valeriya Izhyk (Bankwatch) argues that Ukraine has a vast potential to provide critical raw materials and batteries needed for the EU twin transition and suggests the ways to ensure that the partnership in this domain is beneficial for both parties. Hennadiy Maksak (PrismUA) explores the possibilities of closer military-technological partnership between Ukraine and the EU and the potential that this holds for future European Security architecture. Anna Novosad (savED; Former Minister of Education of Ukraine) discusses Ukraine's education sector as a case in point for rebuilding the country according to the best EU practices and foster closer ties and exchange with EU counterparts. Finally, Dr Oleksandra Keudel (Kyiv School of Economics) analyses how Ukraine's emerging 'collaborative democracy' trend can further foster the country democratic transition and cooperation with the EU.

I would like to express my gratitude to all the contributors and reviewers and especially to Assistant Editors Nataliia Bovkun and Olena Zabrodska for their hard work and dedication. I also thank Michael Emerson, Senior Research Fellow at the Center for European Policy Studies, for his inspiring presence, discussions, and feedback.

Section 1

Shift in Perspective on Ukraine's EU Integration: Reconsidering the Basics

Still in Limbo? Shifting the (EU's) Perspective on Ukraine: from Neighbour to Candidate

Dr Laure Delcour

<https://doi.org/10.53121/ELFTPS5> • ISSN (print) 2791-3880 • ISSN (online) 2791-3899

ABSTRACT

The European Council's unanimous decision to grant Ukraine (and Moldova) European Union (EU) candidate status has marked a watershed moment in the EU's policy vis-à-vis its eastern neighbours. It also charts a completely new course in EU–Ukraine relations, which were hitherto embedded in the framework of the European Neighbourhood Policy and constrained by the sheer uncertainty over their *finalité*.

The chapter argues that the EU is currently facing the opposite challenge vis-à-vis Ukraine. Whereas the end goal – membership of the EU – is now well defined, the road to Ukraine's accession is fraught with dilemmas for the EU. The chapter starts by examining the risks stemming from Ukraine's current 'in-between' situation in the EU's policy framework: it is a neighbour recognised as a candidate country, yet it lacks a clear agenda for opening accession negotiations. The chapter then delves into the challenges the EU is facing in redefining its stance on Ukraine, and it closes by offering recommendations on how the EU can offer Ukraine an effective path to membership.

ABOUT THE AUTHOR

Laure Delcour (PhD/habilitation, Sciences-Po Paris) is an Associate Professor in international relations and EU studies, Université Sorbonne-Nouvelle and a Visiting Professor at the College of Europe.

MORE THAN A NEIGHBOUR, NOT YET AN APPLICANT: UKRAINE'S 'IN-BETWEENNESS' IN THE EUROPEAN UNION'S POLICY FRAMEWORK

'Good fences make good neighbours'? A rapprochement without finalité as part of the European Neighbourhood Policy/Eastern Partnership

With the European Neighbourhood Policy (ENP) and even the more recent Eastern Partnership (EaP), the European Union (EU) has fallen short of providing a clear *finalité* to its relationship with its eastern neighbours, first and foremost Ukraine, for which the ENP was initially designed. The lack of a *finalité* has persisted despite successive adjustments to the EU's policy toolbox, which have, however, been instrumental in bringing Ukraine closer to the EU.

Since 2004, Ukraine has been included (together with other Eastern European and South Mediterranean countries) in the ENP, designed for countries with which the EU aims to develop a 'special relationship' outside the framework of EU accession.¹ Both the ENP and the EaP – the sub-regional initiative launched specifically for eastern neighbours in 2009 – have unquestionably given significant impetus to Ukraine's integration into the EU. In particular, the Association Agreement (AA) and Deep and Comprehensive Free-Trade Agreement (DCFTA), which were signed just a few months after the annexation of Crimea in 2014, marked critical milestones in the relationship between the EU and Ukraine. This is because the AA was designed as a 'truly innovative legal instrument', offering an unprecedented level of comprehensiveness and ambition (Van der Loo, Petrov, & van Elsuwege, 2014). The agreements paved the way for close political dialogue based on shared values, as well as deep economic integration premised on the

elimination of trade duties and, importantly, massive legal approximation of Ukrainian legislation with EU *acquis*.

Therefore, over the past decade the EU's norms and templates have served as a blueprint for domestic change in Ukraine. Since the AA/DCFTA entered into force, Ukraine has reformed substantially, even if unevenly, in line with the commitments taken as part of the agreements (Emerson & Movchan, 2019). This was illustrated a few weeks before Russia's aggression by the adoption of key pieces of legislation, such as the law on 'de-oligarchisation' in late 2021 and the law reforming the High Council of Justice, as well as major policy strategies, for instance on public administration reform (European Commission/High Representative of the Union for Foreign Affairs and Security Policy, 2022). Importantly, the AA developed as a dynamic framework as the two sides incorporated newly adopted EU directives and regulations in its annexes. Thus the agreement was regarded as a flexible instrument to deepen and broaden the scope of integration, as illustrated by Ukraine's intention to update the AA annexes with a view to participating in the EU's Green Deal.

And yet due to the lack of EU membership perspective for Ukraine as part of the ENP/EaP. Despite the major impetus given to rapprochement with the EU since 2014, Ukraine's ever deeper integration into the EU was fraught with major tensions stemming from sheer uncertainty over its *finalité*. Until 2022, despite being acknowledged in the joint declarations of EaP summits (Council of the EU, 2021), Ukraine's long-standing membership aspirations found little echo in the EU. This was blatantly exposed in 2020, when the joint communication prepared by the European Commission and the High Representative prioritised the preservation of the EaP over greater differentiation among the partner countries, as requested by the three associated countries. In the EU's narrative, the continuation of the EaP as a single policy framework was justified by the outcomes of the consultations conducted in the partner countries, which indicated that 'there is a broad consensus that the current EaP policy framework is robust and delivers tangible results for people' (European Commission/High Representative of the Union for Foreign Affairs and Security Policy, 2020). Crucially, despite Ukraine's, Moldova's, and Georgia's reiterated determination to 'become a part of the European family' (Presidents of Georgia, Moldova and Ukraine, 2021), the EU eschewed mentioning a membership perspective and instead called for the full implementation of the AA/DCFTA, thereby

Russia's unprovoked invasion of Ukraine abruptly put an end to the status quo in the EU's policy framework

referring to comprehensive reforms yet to be introduced by the three associated countries (European Council, 2021). However, the open-ended nature of the ENP/EaP turned increasingly untenable for the partner countries in the light of the massive commitments taken as part of the AAs. For instance, the DCFTAs require eastern neighbours to approximate their legal framework with over 90 per cent of the EU's trade-related *acquis* (Duleba, Ben, & Bilčík, 2012). With the entry into force of the agreements, the wholesale adoption of EU norms and standards has only brought Ukraine (as well as Moldova and Georgia) much closer to the EU, and in fact quite close to countries recognised as EU candidates. But this process has developed without an overarching end goal, thereby generating frustration in Ukraine. On average, the associated countries became comparable to the Western Balkans in terms of their convergence with EU rules (Emerson et al., 2021a), yet they lacked a similar membership perspective. Such comparisons have blatantly exposed the paradoxes underlying the ENP and thereby confirmed the unsustainable nature of the status quo in the EU's policy framework vis-à-vis Ukraine.

Ukraine's candidate status and its challenges

Against that background, the decision to grant Ukraine EU candidate status constitutes a major turning point as it clarifies the EU's long-term vision for its relationship with Ukraine, almost two decades after the ENP was launched. By prompting Ukraine, Georgia, and Moldova to immediately apply for EU membership, Russia's unprovoked invasion of Ukraine abruptly put an end to the status quo in the EU's policy framework. It also bolstered the EU's sense of unity in responding to Ukraine's request for membership. With its unanimous agreement on granting Ukraine candidate status, the European Council unequivocally spelled out the end goal of EU-Ukraine relations. The European Commission's

opinion on Ukraine's application also identified a clear roadmap for reforms to be undertaken by Ukraine with a view to progressing on the path to membership (European Commission, 2022).

And yet, notwithstanding such crucial clarifications, Ukraine's integration with the EU remains fraught with sheer uncertainty on *how* to move forward from neighbouring country to EU candidate and then member country. In fact, for all its symbolic value, the status of EU candidate does not suffice *per se* to instil credibility and predictability in EU–Ukraine relations. This derives from both the shortcomings observed in the EU's enlargement process over the past decades, and the current lack of consensus on enlargement within the EU.

While EU treaties say little about enlargement modalities, over the past few decades the EU's practice has turned accession into a convoluted process, the outcome of which has increasingly become uncertain. Despite being widely hailed as a success, the process that led to the 2004 enlargement was not exempt from ambiguities and tensions. In sharp contrast to the previous rounds of expansion, the EU requested from candidate countries that they comply with the *acquis* before accession. And yet, despite being much tougher, the EU's conditionality was neither clearly specified nor consistently applied. After the EU introduced the Copenhagen accession criteria in 1993, it failed to provide a clear definition of the key concepts referred to in the criteria, first and foremost the political one. Despite the fact that compliance with the Copenhagen political criterion was then regarded as a prerequisite for the opening of any accession negotiations, the European Commission fell short of producing a single document clarifying what was meant by 'stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities' (Kochenov, 2004). These lacunae prevented a robust operationalisation of the accession criteria and only made an effective measurement of their application more complex, as reflected in the inconsistent evaluation of reforms across candidate countries throughout the 1990s and early 2000s. Ultimately, the EU failed to establish a clear connection between the assessment of the state of democracy and the rule of law, on the one hand, and progress in the enlargement process, on the other hand (Nicolaidis & Kleinfeld, 2012).

The flaws noted in the enlargement policy throughout the 1990s have persisted in the subsequent rounds of enlargement. If anything, the path followed by the Western Balkans to the EU has been

meandering and bumpy, not least because of these countries' own shortcomings in implementing key political reforms (Mirel, 2019) and the rise of authoritarianism in the region, but also because of the continuous lack of EU resolve in upholding democracy and the rule of law (BiEPAG, 2017). Crucially, these lingering flaws have only been exacerbated by the 'nationalisation' of the enlargement policy, that is, increased control by EU Member States, which started as a 'creeping' process in the mid-2000s (Hillion, 2010) yet became increasingly apparent in the following decade. The reinforcement of conditionality before and during the accession negotiations has been instrumental in enhancing Member States' leverage, as 'both the definition of the benchmarks [to open/close negotiating chapters] and the assessment of their fulfilment are subject to the Council's unanimous approval' (Hillion, 2010: 19). As a result of the continuous control exerted by the Member States over enlargement, in practice the EU has lacked coherence in its decision to let the Western Balkans in (Lazarevic, 2018). This is because of the vetoes applied by the Member States, which have severely damaged the EU's credibility and placed its enlargement policy in an impasse. In fact, irrespective of whether the candidate country complies with the Copenhagen criteria, the whole accession process has become hostage to national interests or bilateral disputes, as was vividly illustrated by the successive vetoes by Greece, France, and Bulgaria to the opening of accession negotiations with North Macedonia (Delcour & Wolczuk, 2023).

Therefore, if anything, the recent experience of the Western Balkan countries does not bode well for Ukraine's accession. This is despite the fact that the 2020 revision of the enlargement policy brought back the 'fundamentals' (democracy and the rule of law) at the core of the accession process, in an attempt to mend some of the flaws observed since the 1990s. In essence, despite unanimity in granting Ukraine candidate status, deep differences persist among the Member States with respect to the country's accession to the EU. These were perhaps best illustrated by the contrasting views on the timeline envisaged for Ukraine's accession. From the very day when Ukraine applied to join the EU, Poland, the Czech Republic, Slovakia, the three Baltic states, and some other Central European countries expressed their support for the country's fast-track membership (President of Poland, 2022). By contrast, President Emmanuel Macron insisted on the fact that Ukraine's accession would take 'years, even decades', unless the EU decides

to 'lower its accession standards' and 'rethink its unity' (*Brussels Times*, 2022). Crucially, such differences on how soon Ukraine will join the EU conceal more deeply rooted divergences on whether the Union could or should integrate new members, and, more broadly, on how it should develop in the future. The latter question has been central to the reluctance voiced by two EU founding members, France and the Netherlands, vis-à-vis future enlargements. This is because the transformations of the EU in the wake of the recent accession rounds do not coincide with both countries' preferences regarding the integration process. The French authorities, in particular, have framed the deepening and widening of EU integration as antagonistic processes, and they have in fact long prioritised the former over the latter, regardless of who is in power in Paris.

In the absence of a consensus among EU Member States on how to move forward with the forthcoming enlargement, the outlook looks ominous for the current candidate countries, not least Ukraine. Any EU Member State could in fact exploit the assessment of benchmarks for their own purposes, thereby holding up the process. In such a case, Ukraine may remain stuck for years before the EU agrees to opening accession negotiations, as has been the case for Albania and especially North Macedonia, which waited for 8 and 17 years, respectively, for talks to start owing to the successive opposition of several Member States. A similarly haphazard accession process would arguably bear major negative implications for Ukraine, given the country's ongoing fight against Russia's aggression. Should the EU prove unable to deliver on its promise to integrate Ukraine, this would cause major damage to the Union's credibility and have destabilising effects in Ukraine and beyond. And yet, for Ukraine's accession to become a success, it also needs to be fully endorsed and taken on board by EU Member States and their citizens. The next section delves into the conundrum facing the EU in shifting its perspective on Ukraine.

THE ROAD TO UKRAINE'S MEMBERSHIP: CHALLENGES FOR THE EU

After quickly agreeing to Ukraine's candidacy, the overarching challenge with which the EU is confronted is stagnation, in other words the failure to turn Ukraine from a neighbour into a candidate country about to enter negotiations. In order to effectively transform the nature of its relationship with Ukraine, the EU needs to address three intractable challenges related to its current policy

frameworks, the political climate around enlargement, and the European integration process, respectively.

From neighbour to candidate: a big step for the EU

Ukraine's (and Moldova's) EU candidate status fundamentally questions the foundations upon which the EU has interacted with the countries located on its borders over the past two decades. This is because the EU's vision of its periphery was premised upon a dichotomy between future EU members on the one hand, and countries without any likelihood of membership in the short to medium term on the other hand. Whereas the former group was included in the EU's enlargement policy, the latter joined the ENP. This vision collapsed abruptly as a result of Ukraine's application, which only made the dichotomy meaningless.

Thus, Ukraine's EU candidate status does not just entail moving from the ENP to the enlargement policy. It requires rethinking and reshaping the whole EU strategy vis-à-vis the surrounding regions. By shaking up the EU's key policies, Russia's war has opened up a broad range of policy options for the EU. This is also because the two core EU policies had exhibited key shortcomings prior to February 2022.

Yet the question of what should be done with the existing policy frameworks, and what should come next, is thornier than it may seem at first glance. In essence, the EU remains a complex organisation averse to *tabula rasa*. Its current – and, arguably, forthcoming – choices vis-à-vis Ukraine remain constrained by the previous policy options it selected and the policy instruments it introduced. Thus far, no major change in the policy framework has been introduced or even discussed. Despite acknowledging the increasingly diverse aspirations of the partner countries, in late 2022 the EU and its eastern partners decided to maintain the EaP as a single policy framework (Meister et al., 2023). Likewise, no fast-track accession is on the table for Ukraine, and the experience of the Western Balkans has only confirmed how difficult it is to revise the enlargement policy. This is despite growing awareness of the need to enhance its credibility.

Lingering sensitivity around enlargement

As has been the case for the Western Balkans (Wunsch et al., 2019), Ukraine's accession process will develop in a politically sensitive climate. This is not only because Member States hold different views on the timeline and modalities of Ukraine's

Ukraine's application comes at a time when the EU integration project is both questioned internally and challenged externally

membership, as noted above. In recent years, EU citizens have expressed growing scepticism as to whether the EU should welcome new members. Despite unwavering support for Ukraine in fighting back Russian aggression, this scepticism is likely to persist, as illustrated by recent polls. Whereas the share of citizens supporting further EU enlargement increased by 10 per cent in the months that followed Russia's invasion, it decreased by 5 per cent just one year after the conflict started.² The majority of French, German, and Austrian citizens remain opposed to further enlargement. Arguably, their doubts regarding future EU expansions have to do with the EU itself as much as with candidate countries. The 'enlargement fatigue' which developed among western EU citizens in the mid-2000s finds its roots in how Central European countries' accession process was managed by EU institutions, that is, as a technocratic move. Democratic backsliding in Poland and Hungary, as well as the deep rifts between Central and Western European countries exposed during the 2015 refugee crisis, have only exacerbated concerns over the implications of any future accession – and therefore Ukraine's – for the EU integration process.

Beyond the EU's integration capacity: what kind of EU integration?

Since the mid-2000s, the EU has de facto treated deepening and widening as different, and even potentially opposite, integration choices. This is illustrated by the emergence (back in 2006) of the EU's 'integration capacity' as a prerequisite to any future expansion of the bloc. As indicated by the European Commission in 2006, 'integration capacity is about whether the EU can take in new members at a given moment or in a given period, without jeopardizing the political and policy objectives established by the Treaties' (European Commission, 2006: 17). This entails that the EU should not only

ensure that applicant countries are well prepared to take on the obligations of membership, but also that the EU is able to both function and 'maintain the momentum to reinforce and deepen European integration by ensuring the EU's capacity to function' prior to further enlargements (European Commission, 2006: 17).

While EU consensus on granting the country candidate status is noteworthy, Ukraine's application is likely to reignite the debate on the future of EU integration. This is not only because of the country's size and population, which make it much bigger to swallow than any of the past candidate countries; this is not even primarily because of the country's preparedness for membership. This is because Ukraine's application comes at a time when the EU integration project is both questioned internally and challenged externally, not only by Russia. How to address the multiple geopolitical, political, economic, and societal challenges with which the EU is confronted is subject to debate among EU actors. This requires shaping a common vision for the future EU integration process, which would go well beyond the issue of Ukraine's accession but also take into account its implications.

THE EU NEEDS TO PREPARE FOR ENLARGEMENT TO UKRAINE, TOO

Recommendations for the EU

1. Exploit the possibilities of the AA to further integrate Ukraine.
2. Develop a gradual enlargement process based upon clear-cut benchmarks and transparent monitoring.
3. Insist on the political significance of enlargement to Ukraine.
4. Use the European Political Community as a political platform to reflect on the path of future EU integration.
5. Closely associate EU civil society to Ukraine's accession process.

Exploit the possibilities of the AA to further integrate Ukraine

Despite the fact that Ukraine has been granted EU candidate status, the current contractual framework – the AA – has not lost its relevance, as was acknowledged by EU and Ukrainian leaders in February 2023:

The EU–Ukraine Association Agreement has been and continues to be of essential importance in

facilitating and promoting Ukraine's further integration with the EU. (European Council, 2023)

This is not only – and not even primarily – because the AA has yet to be fully implemented. In essence, the AA is still 'fit for purpose' because of its dynamic nature (van der Loo & van Elsuwege, 2022). It could thus serve as a vehicle for deeper sectoral integration between Ukraine and the EU before negotiations are opened. In particular, the revision of the agreement's annexes could strengthen the country's approximation with the EU's legal framework, for instance in relation to the Green Deal.

Develop a gradual enlargement process based upon clear-cut benchmarks and transparent monitoring

Delays and deadlocks in the Western Balkans' accession process have exposed the need for a comprehensive overhaul of the enlargement policy, going beyond the 2020 revision. A reform of enlargement could also address the shortcomings observed in the post-accession phase (crucially, democratic backsliding and major breaches of the rule of law in Hungary and Poland). In recent years, the concept of staged integration (Lazarevic, 2018; Mirel, 2019) has gained momentum as a model to reinvigorate the enlargement process. In its most elaborated version (Emerson et al., 2021b), this proposal includes four different stages associated with detailed benchmarks, thereby allowing altogether a transparent assessment of candidate countries' performance and a clear progress of applicants on the basis of reforms actually implemented. While re-instilling credibility in the accession process by outlining a clear way forward from applicant to member, staged integration can also alleviate the concerns of EU Member States reluctant to enlarge by making the process more gradual and introducing reversibility. This model could thus help foster consensus-building among Member States for driving Ukraine's accession forward.

Insist on the political significance of enlargement to Ukraine

While easing some of the concerns expressed by Member States over new enlargements, staged integration will not suffice per se to convince them of the need to integrate Ukraine. This is because it perpetuates (even though it improves them) the methods of the enlargement policy as

it was developed in the 1990s, namely a number of conditions to be met as part of pre-accession. In essence, this model is based upon mistrust since the applicants do not have the possibility to adjust their legal framework to align with the *acquis* during transitional periods after joining, as was the case for Greece, Spain, and Portugal (Kochenov & Janse, 2022). The core assumption underpinning this policy is that candidate countries are regarded as too different to join the EU as such. In view of the lingering reluctance regarding enlargement in some Member States, there is little doubt that this assumption will persist for Ukraine's accession.

It is therefore crucial to deliver a strong political message emphasizing that Ukraine's future unequivocally lies in the European Union. In light of the country's ongoing fight to push back Russian aggression, and also its efforts to reform in line with EU standards, the EU cannot simply rely upon a technocratic approach that may be used as a smokescreen to cover divergences among Member States, reluctance of some to enlarge, and mistrust vis-à-vis candidate countries. If anything, Ukraine's application has confronted the EU with its responsibilities. It provides yet another historical opportunity to give an impetus to Europe's unification, thereby making up for the early 1990s when the post-Soviet countries received only limited attention from the EU. Thus, instead of pointing out the expected length of Ukraine's accession process, EU leaders should stress its political meaning for EU integration.

Use the European Political Community as a political platform for reflection on the future of Europe and the EU's role therein

The European Political Community (EPC), initially put forward as a rather vague proposal by President Macron, could act as a bridge between Ukraine's accession process and the broader political developments on the continent. This is because it could serve as an inclusive platform in which Ukraine could participate, together with EU Member States and other countries in and around Europe, in the reflections on the challenges facing the continent. The EPC's added value lies in both its broad composition and its loose framework, which altogether decentres the EU and places Ukraine on a more equal footing compared with the asymmetrical nature of the accession process. It also paves the way for the eventual return of 'pariah states' to the European concert of nations, once their regimes have changed; as such, the EPC

provides 'a unique and valuable testing laboratory to elaborate and to discuss current and future European crises' (Petrov, 2022).

CLOSELY ASSOCIATE EU CIVIL SOCIETY TO UKRAINE'S ACCESSION PROCESS

The 2004 enlargement was poorly explained and thus not well understood in most EU Member States, especially in the founding countries of the European Economic Community. This had major implications for their citizens' attitudes vis-à-vis the whole EU integration process, as was blatantly illustrated by the Dutch and French rejection of the so-called Constitutional Treaty in 2005. Therefore, for Ukraine's accession to become a success, it also needs to be fully endorsed and taken on board by EU citizens. The EU and its Member States should consider introducing specific funding schemes for explaining the rationale and modalities of EU enlargement to Ukraine. This could be channelled through grassroots civil society organisations via social media or targeted awareness-raising campaigns.

NOTES

1. Article 8, Consolidated Version of the Treaty on the European Union, OJ C326/01, 2012.
2. Standard Eurobarometer 97, Summer 2022, <https://europa.eu/eurobarometer/surveys/detail/2693>; and Standard Eurobarometer 98, Winter 2022–23, <https://europa.eu/eurobarometer/surveys/detail/2872>.

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The Next Best Thing: Staged Accession as an Alternative for Fast-Track Accession for Ukraine

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<https://doi.org/10.53121/ELFTPS5> • ISSN (print) 2791-3880 • ISSN (online) 2791-3899

ABSTRACT

The chapter presents the staged accession model as a viable solution for Ukraine as well as for candidate countries whose process of accession to the European Union (EU) has been stalled. It first analyses the main arguments from the public debate in the EU against fast-track accession for Ukraine; it then addresses the concerns raised in these arguments by presenting staged accession as a relatively fast and realistic option. In contrast to staged accession, the proposal to regard the European Political Community as a first step towards EU membership is less attractive for the candidate countries and offers no mechanisms for conditionality. Staged accession maintains the conditionality inherent in the EU enlargement process but provides candidate countries with tangible benefits of membership at every stage according to their successful performance in each cluster. The EU institutions – primarily the Commission – should look at ways to operationalise the staged accession model for the next round of enlargement.

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INTRODUCTION

The ambition of Ukraine's leadership and society to become part of the European Union (EU) as quickly as possible is not only a political necessity – providing a vision of the future to inspire a nation at war – but also a hands-on commitment. Laws are being drafted, policies are being changed, and institutions acting as safeguards for the rule of law are being reformed in an intense race to complete the European Commission's list of requirements in the shortest time possible – and then to begin accession talks. Ukrainian society is committed to the country's European choice: in early 2023, a record 87 per cent of Ukrainians were in favour of joining the EU (Rating Group, 2023). Ukrainians hope to achieve substantial progress on this path while at the same time defending their country against Russian aggression.

In Western European capitals and in the European quarter of Brussels, the view prevails that a steady but measured pace of accession should be maintained. As summarised by Laure Delcour and Kataryna Wolczuk (2023: 4), 'in the current context, one challenge stands out: how to balance the geopolitical imperative of Ukraine's membership against its readiness for membership and the EU's merit-driven demands of applicant states against the (lingering) reluctance of many member states to Ukraine's accession'. This preference for a more cautious approach, shared by some European governments, is reflected in several arguments concerning limitations that, in the opinion of many political actors, preclude fast-track accession.

ARGUMENTS AGAINST UKRAINE'S FAST-TRACK ACCESSION TO THE EU

Ukraine's (presumably limited) capacity to complete and implement reforms and adopt the EU *acquis* while also fighting a full-scale defensive war on its territory

Since it signed the Association Agreement with the EU in 2014, Ukraine has launched a full-scale reform programme. Most importantly, many (although not all) elements of this programme have already developed into actual reforms: those of the police, anti-corruption bodies, the banking sector, land management, public administration, and, last but not least, the reform of municipalities, allowing for a much more democratic, decentralised governance model (RDO, 2020). In some of these areas, unfinished work remains, especially with regard to the list of seven steps the European Commission has outlined for Ukraine before it assesses whether it is ready to start accession talks.¹ Some of these steps have been successfully completed, for instance the new law on media, aligning Ukraine's legislation with the EU's audio-visual media services directive (Movchan & Remizov, 2023: 16). Other laws still await evaluation by major European expert bodies such as the Venice Commission.² Some steps still present major challenges, reform of the judiciary being a case in point.

Ukraine's progress on its EU reforms path since February 2022 has been assessed differently by different actors, with varied degrees of satisfaction with the country's efforts and results. There are those who say that despite its titanic effort, Ukraine's record on reforms has been spotty, and there is no basis to believe that the war has increased the government's capacity to implement reforms rather than weakened it (Härtel, 2022). Among the most pessimistic assessments, one hears reminders that before the war Ukraine did not have a good reputation with investors due to acutely perceived corruption risks.³ How much of this is based in fact or experience (Ukraine's corruption perception index remains lower than that of most of its neighbours, excluding Russia) (Transparency International, 2022), and how much reflects the influence of the Kremlin's narratives on European public discourses (Lutsevych, 2023), remains a question for another study.

In all circumstances, the progress, quality, and irreversibility of reforms need to be addressed properly. As pointed out by Galushko et al. (2022: 6), 'as the European Commission prepares its first full enlargement report on Ukraine ... it should keep to the evaluation of the seven specific reform

conditions attached to Ukraine's EU candidacy and be prepared to reward progress on a merit basis and commensurate with reform achievements'.

The EU's failure to complete the accession of the Western Balkan countries

Another argument against fast-track accession for Ukraine is based on the EU's failure to complete the accession of the Western Balkan countries, especially those that have been stuck in the waiting room for many years awaiting the EU Council's approval of the start of their accession talks. Giving fast-track priority to Ukraine and Moldova is seen as unfair in this context,⁴ even though many experts and policy-makers recognise that the two countries' geopolitical situation calls for special solidarity measures by the EU.⁵ In the case of Ukraine, the urgency of broad EU engagement and massive-scale aid is justified by the war, while the bravery of the Ukrainians defending European values lends legitimacy to special treatment in the eyes of the European public.

At the same time, there are voices suggesting that the unique situation in which Ukraine gained its candidate status may also breathe new life into the accession process of the Western Balkan countries, which has long been stalled (Alesina, 2022a). The exact way in which this may happen remains to be charted on the political playing field, but it is true that the accession of the Western Balkan candidates may be paired with that of new candidate states at least at the technical level, and good practices of reforms to meet conditionality may be shared.

The EU's integration capacity and unfinished reform agenda

Finally, an obstacle that is frequently identified as crucial is the EU's own unfinished business of reform. Proposals for EU reforms aiming at deeper integration and less contentious decision-making processes in the Council have been on the table for some time (e.g. European Parliament, 2017; Von Ondarza & Ålander, 2022), yet many experts hesitate to propose a timeline within which this reform will be possible, especially when it comes to changes that require amendments to the Treaty. At the same time, there are practical reasons for current large Member States to view EU reform as a prerequisite for enlargement. One such reason is a very significant number of European Parliament seats going to Ukraine based on its 40 million-plus population if the EU maintains its current governance principles. Moreover, Ukraine's massive agricultural sector

There are practical reasons for current large Member States to view EU reform as a prerequisite for enlargement

would present a challenge for the long-unreformed Common Agricultural Policy. As Bartosz Brzezinski (2023) has pointed out, ‘[i]f Ukraine were to become a member of the EU tomorrow, it would get by far the biggest chunk of money from the €386 billion Common Agricultural Policy, which rewards countries according to their agricultural area’.

Parallel to the many actors arguing that accession requires more time, there are also voices, particularly in the east of the EU, that argue for Ukraine’s accession to be completed as quickly as possible. Support for Ukraine’s EU membership has been a more or less consistent position among the Baltic states and Poland since the days when Ukraine first announced its bid (*Baltic Times*, 2022), with geopolitical arguments – Ukraine’s membership being crucial for the security and viability of the EU itself – taking precedence.

While the arguments against fast-track accession should be treated as bona fide concerns rooted in national interest but also in good governance principles, they do contribute to the gap between Ukraine’s perception of the accession timeline and that of its western EU partners. The resulting tension may have far-reaching consequences. Failing to reconcile the strenuous, fast-track timeline for accession proclaimed by the Ukrainian leaders and the slow, procedural, and cautious timeline that many West European decision-makers are comfortable with (we are speaking here of two years versus roughly ten years or more) may cause serious complications for both Ukraine and Europe. First and foremost, delayed accession would undermine Ukrainians’ trust in the EU after the war – one only has to think of the disappointment the enlargement stalemate produced in the Western Balkan candidate countries (Emerson & Blockmans, 2023: 2). Moreover, with no accession immediately

forthcoming, this would also undermine Europe’s unity, as a blame game between eastern and western Member States could easily emerge. Such ruptures would strengthen the anti-liberal element in the EU and would give a new lease of life to anti-European and anti-Western voices in Ukraine. In Ukraine, those voices are virtually silent now, when national unity is predicated on a strong pro-European sentiment. The momentum towards Europe, which has grown since the Euromaidan in 2014, has now reached its peak in Ukraine, and letting it end in profound disappointment would denote nothing less than the EU’s moral bankruptcy and loss of legitimacy.

VIALE ALTERNATIVES? PROPOSALS FOR A NEW WAY FORWARD

Finding an alternative to a long and disheartening accession process lasting a decade is not just in the interests of Ukraine – it is also of crucial importance to the credibility and future of Europe as such.

The need for an alternative to the lengthy and potentially disheartening accession process has been voiced by think tanks and journalists across Europe (Alesina, 2022b; Emerson & Blockmans, 2023; Garton Ash, 2023). This perceived need has already resulted in several proposals, such as staged accession, partnership for enlargement (Buras & Lang, 2022), membership of the European Economic Area prior to EU membership, and using the newly launched European Political Community (EPC) (Stratulat, 2022) as a platform for tighter geopolitical integration of Ukraine before EU membership can be achieved.

Let us examine the two most discussed political alternatives (staged accession and EPC) while keeping in mind the arguments discussed above and the prerequisites of successful reforms in Ukraine – the need to continue to increase public administration capacity and safeguard the rule of law, and the need to continue decentralising.

EUROPEAN POLITICAL COMMUNITY

When French President Emmanuel Macron first proposed the idea of the European Political Community, it was perceived negatively in candidate countries and in some EU Member States as it was read to be a less committed substitute for full EU membership. Perceptions have changed since then, with France making it clear that the EPC is not an alternative to membership in the EU but rather a political dialogue platform for all European countries that respect democracy and the rule of law. Nevertheless, there

is still some vagueness about the exact functions of the EPC apart from it being a space for dialogue on broad political issues that are not sufficiently concrete for the EU Council to address.

The notion that membership of the EPC may be developed into a vehicle for political integration before Ukraine completes its EU accession is circulating in Brussels political circles and has been addressed in publications. There are some arguments in its favour, for example:

For Ukraine and other candidate countries, the EPC would entail much greater exposure to the EU's institutions and decision-making from the outset of the accession process, i.e. even before negotiations start, and yet outside the accession toolbox, i.e. on a more equal footing compared to the very asymmetrical framework of negotiations. In terms of substance, the EPC would also strengthen the emphasis on political values (the first Copenhagen criterion). (Delcour & Wolczuk, 2023: 10)

There are, however, obvious limitations. The EPC, while in itself a constructive platform for equal dialogue, cannot be perceived by Ukrainians as an adequate substitute for early accession. EU membership is first and foremost a dream and a matter of status. A more free and dignified life and prosperity are what the populations of candidate countries see in the prospect of EU membership, and the EPC is not designed to be a vehicle for development and prosperity. For political leaders seeking to deliver sweeping improvements, the EPC falls short of the EU's promise.

Moreover, from the perspective of state capacity, reforms of the rule of law, and decentralisation, the EPC does not yet possess mechanisms that would actively support Ukraine in its quest to improve its institutions. There is little conditionality (apart from the first Copenhagen criterion) and no associated funding for facilitating best practices of democracy and good governance.

STAGED ACCESSION

The idea of staged accession evolved out of the response to the impasse on EU enlargement in the Western Balkans (Emerson et al., 2021). It has been proposed as a means for drawing Ukraine ever closer to the family of EU Member States while guarding against potential pitfalls or backsliding on commitments (Alesina, 2022b; Delcour & Wolczuk, 2023).

The point of staged accession is that a candidate country gains access to the rights and privileges of

a Member State step by step, apace with its adoption of the *acquis* and other crucial phases in the accession process. According to the model proposed by Michael Emerson and others, this alternative method of accession is based on the gradual opening of access to EU membership benefits and obligations, such as increasing access to EU structural funds and participation in EU institutions. This gradual access is conditional on fulfilling concrete criteria and benchmarks. As implementation instruments, the proposal envisages a new document adopted by the EU, charting the progressive accession stages, as well as bilateral agreements with candidate countries.

Staged or gradual accession consists of four stages, none of which can be omitted. A candidate country thus has to pass through each of them, progressing from Stage I to Stage IV. Every stage has its own criteria for measuring progress and its own rewards for achieving predefined targets, including access to further EU funds and programmes.

Presence in EU institutions would also become progressively possible, leading up to the country achieving full membership status with full voting rights (Emerson et al. 2021). During the Initial Accession Stage, candidate countries would benefit from (selective) observer status in the EU's institutions and receive half of a full EU member's funding, provided that satisfactory ratings were achieved in 'accession clusters' (clusters of accession chapters). During the Intermediate Accession Stage, countries would have to achieve moderate to good ratings in all relevant accession clusters and would receive 75 per cent of EU funding per capita, plus access to some policies and institutions of the EU.

The New Member State stage would require overall good ratings in all accession clusters and would imply access to 100 per cent of EU funding per capita, just like current Member States. At this stage, the citizens of the candidate countries would become EU citizens. At the same time, some limitations would still apply to the countries' participation in decision-making in the Council and Commission.

Finally, the Conventional Membership stage would set in when all accession requirements were met in full (Emerson et al., 2021).

The European Liberal Forum (ELF) has proposed modifications to the staged accession model, introducing a preliminary 'zero stage' to begin when the country submits its membership application. After passing a 'qualification test', the country would begin its countdown to full membership by signing a legally binding Accession Treaty, which would set

Staged accession offers the candidate state progressive participation in EU funds and institutions

out all the milestones and deliverables of the accession process (Alesina 2022b: 9). Another modification proposed by the ELF is the specificity of timing in the form of deadlines set in the treaty for each country's accession process. These deadlines are not meant as the earliest date when accession can be completed (that depends on fulfilling the criteria), but rather the last date when it can be completed while still maintaining the credibility of the whole process.

It has to be noted that the authors of the original model see it as closely bound to the reform of the EU decision-making process by expanding the role of qualified majority voting versus unanimity (Emerson & Blockmans, 2022). However, there is no consensus regarding such reform among EU Member States to date (see e.g. Barigazzi & Hanke Vela, 2022).

STAGED ACCESSION: BENEFITS FOR UKRAINE

The key elements of the staged accession model are worth considering for their intrinsic value, which is fully applicable to Ukraine. Staged accession offers the candidate state progressive participation in EU funds and institutions, predicated on successful performance across a number of clusters, involving legal approximation, market rules, and, most crucially, fundamental reforms that enshrine the rule of law and democratic principles in the laws and actual policies of the country. Preserving strong, uncompromised conditionality is the main strength of this model – while the stage-by-stage approach allows for the benefits of EU integration to reach Ukraine's population much earlier than in the case of waiting for full accession to be completed.

Staged accession also safeguards against many of the risks highlighted in the arguments against fast-track accession analysed above. For the key areas of reforms still to be completed in Ukraine – reform of the judiciary and empowerment of

anti-corruption institutions, finalising decentralisation, and building a strong and professional public administration – the staged accession model offers a clear framework of requirements, incentives, and rewards. Any concerns regarding Ukraine's capacity to implement and complete crucial reforms can be addressed immediately in the first stage of the process, since all six clusters of the framework in the Commission's 2020 methodology are to be opened with the first stage of accession. This allows Ukraine and the European Commission to see where public administration needs to boost its capacity and to identify resources (both human and financial) to address these areas in a timely manner.

Furthermore, the argument that enlargement in the Western Balkans needs to happen first is addressed by the staged accession model, which allows several candidate countries to access the process in parallel and for each of them to proceed at their own pace.

The potential for success of the staged accession model also depends on effective communication between European institutions and the Ukrainian government and society. Making clear the benefits of staged accession vis-à-vis an unpredictably long enlargement process is an important political responsibility. The experience of the Western Balkans (where the model was first proposed) indicates that reactions can be mixed if communication fails. The EU would have to begin a robust discussion of the staged accession model with current candidate countries, including Ukraine, given that fast-track accession is highly unlikely. It should emphasise that the staged model is designed to accelerate the process, which otherwise could last a very long time – and that it would bring Ukrainian citizens tangible benefits from the outset.

CONCLUSIONS

The message of European unity that triumphed when the EU offered candidate status to Ukraine and Moldova will be hard to preserve if Ukraine's accession becomes a drawn-out, bureaucratic process. Finding a way to reconcile the Ukrainian political timeline for EU membership with the Western Europeans' timeline is a historic task for the EU leadership, in which it cannot afford to fail. If the tensions of differing timelines remain unresolved by 2024, when European institutions will be partly paralysed while awaiting the results of European elections, it may become increasingly difficult to maintain the EU's unity and Ukraine's European momentum. Alternative models for enhancing and

innovating the accession process therefore must be considered seriously.

The staged accession model, as a fairly concrete and flexible approach, could serve as a vehicle to reconcile the accession timelines. Importantly, it would allow Ukraine to enjoy some of the crucial prerogatives of an EU Member State while the accession process is still ongoing. At the same time, it preserves a clear conditionality framework, which will be beneficial for Ukraine's progress in fundamental reforms and for preserving key EU principles intact. The same model should of course be considered for Moldova, as well as for the Western Balkan candidate countries that have been waiting for EU membership for decades. Their experience offers a number of lessons on the negative effect of lack of political will to enlarge the EU after promises have been made. That mistake should not be repeated in the case of Ukraine and Moldova.

There is still space for an optimistic scenario where tensions between different political timelines for Ukraine's accession are reconciled and trust and unity prevail. The future of both Ukraine and Europe may be dependent on this outcome.

RECOMMENDATIONS

- Support for accelerating EU enlargement and specifically for a timely beginning of accession talks with Ukraine should be demonstrated by all key EU figures in line with the statements of support for Ukraine's European destiny made at EU-Ukraine summits. The emphasis should be on offering a realistic yet dynamic timeline that would bring tangible results to the Ukrainian people (access to the single market for goods and services, roaming, etc.) already in the early stages of the accession process.
- The staged accession approach should be evaluated by the European institutions (primarily the Commission and the Parliament, leading to discussion in the Council) also without waiting for EU reform, or at least considering only such reform steps that are possible without treaty changes (Emerson & Blockmans, 2022). This would allow for candidate countries' reforms and legal approximation to proceed at a good pace, and for EU funding to flow to the candidate countries, even before consensus on EU reform is (hopefully) achieved. Waiting for EU reform first would be a major mistake, as time and motivation will be lost on both sides, and Eurosceptic forces both in the candidate countries and in the EU might once again come to the fore.
- Parallel to offering a tangible and timely accession opportunity, the EU needs to scale up its support for reforms in Ukraine. It is essential that the ratings of progress make clear reference to crucial reform areas – for instance, it would be right to ensure through accession conditionality that decentralisation reform in Ukraine proceeds to a point of no return, from which it can no longer be reversed by future governments.
- While the engagement of the EU with the reform process in Ukraine has been unprecedented (Delcour & Wolczuk, 2023: 14), there are some basic prerequisites that EU decision-makers should keep in mind if they want to see reforms through to the end:
 - Experience since 2016 illustrates that reforms are only effective when there is an increase in public administration capacity (RDO, 2020), and the issue of qualified and motivated human capital is also crucial to the success of new reforms concerning the rule of law – for example, the selection of judges. The EU can do more to boost professionalism in Ukraine's civil service by upscaling the existing multi-donor Ukraine Reforms Architecture programme.
 - There are concerns that the achievements of the crucial decentralisation reform have been somewhat eroded by wartime governance (Garton Ash, 2023; Galushko et al., 2022). In future the EU's approach to Ukraine's accession should stress the need to maintain and enshrine the achievements of decentralisation.

NOTES

1. The seven conditions stipulated in the Commission's opinion include 1) reform of the Constitutional Court; 2) the integrity vetting of the candidates for the High Council of Justice and the selection of candidates to establish the High Qualification Commission of Judges of Ukraine; 3) strengthening the fight against corruption, in particular at high levels, with a credible track record of prosecutions and convictions and completing the appointment of a new head of the Specialised Anti-Corruption Prosecutor's Office; 4) anti-money-laundering and law enforcement sector reform; 5) limiting the excessive influence of oligarchs in economic, political, and public life; 6) aligning Ukraine's legislation with the EU audio-visual media services directive; and 7) finalising the reform of the legal framework for national minorities and adopting implementation mechanisms. European Commission, Commission Opinion on Ukraine's application for membership of the European Union, June 2022, https://neighbourhood-enlargement.ec.europa.eu/opinion-ukraines-application-membership-european-union_en.
2. The Venice Commission decided to postpone to its 135th Plenary Session the examination of the draft interim Opinion on the law on the prevention of threats to national security, associated with excessive influence of persons having significant economic or political weight in public life (oligarchs) of Ukraine.

[https://www.venice.coe.int/webforms/documents/?pdf=CDL-PL-PV\(2023\)001syn-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PL-PV(2023)001syn-e).

3. Interview with a German foreign policy expert, Brussels, March 2023.

4. Interviews with German foreign policy experts, Berlin, March 2023.

5. See, for example, statements by Commission President Ursula von der Leyen on Moldova <https://eunighbourseast.eu/news/latest-news/european-family-must-stick-together-von-der-leyen-announces-additional-energy-support-package-of-e200-million-for-moldova/> and Ukraine <https://www.reuters.com/world/europe/ukraine-making-good-progress-towards-eu-membership-von-der-leyen-says-2022-09-15/>.

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Corruption and Anti-corruption in Ukraine: Continuity and Change

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<https://doi.org/10.53121/ELFTPS5> • ISSN (print) 2791-3880 • ISSN (online) 2791-3899

ABSTRACT

Although Ukraine has been perceived as a country experiencing widespread corruption, under the conditions of the war credible and striking anti-corruption measures have been put in place. This chapter takes a historical institutionalism approach to explain the belated positive effects of post-Maidan anti-corruption reforms in the country. It argues that effective anti-corruption policies and institutions are the result of an incremental change in the social contract. The nature and functions of anti-corruption policies are presented in three periods: politically instrumentalised anti-corruption policies before the Euromaidan; society-driven anti-corruption policies after the Euro-maidan; and institutionalised anti-corruption policies since the war. The concluding section provides lessons learned and recommendations for future anti-corruption endeavours in Ukraine.

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INTRODUCTION

Ukraine has been known for its widespread corruption for many years, despite two revolutions – the Orange Revolution and the Revolution of Dignity – which aimed to open the captured political system to the citizens. These revolutions failed to produce immediate improvements, despite expectations that the new political leadership in Ukraine might introduce anti-corruption reforms. Since the Russian invasion, however, the political leadership has received a positive response from its Western partners to make sure 'that the fight against corruption is delivering tangible results' (European Commission, DG NEAR, 2023). What explains this change in Ukrainian actions and in external perceptions of anti-corruption measures, and is this change sustainable?

This chapter takes a historical institutionalism approach to explain the belated positive effects of anti-corruption reforms in Ukraine (Mahoney, 2000; Mahoney & Rueschemeyer, 2003). The argument is that effective anti-corruption policies and institutions are the result of incremental changes in the social contract (Helmke & Levitsky, 2004). Civil society representatives and citizens gained more influence after the Revolution of Dignity, allowing them to shape anti-corruption policies and institutions. This non-oligarchic influence led, in 2020, to the first positive instances of anti-corruption success, indicating a qualitatively new logic in the system's functioning. The war reinforced this shift in power dynamics by decreasing oligarchic influence. Although corruption still exists in Ukraine, the historical institutionalism approach suggests that slow and incremental change may lead to long-term success in controlling it.¹

This chapter discusses the nature and functions of anti-corruption policies in three periods: instrumentalised anti-corruption policies before the Euromaidan; society-driven anti-corruption policies after the Euromaidan; and institutionalised anti-corruption policies since the Russian invasion. The concluding section provides lessons learned and recommendations for future anti-corruption endeavours in the country.

INSTRUMENTALISED ANTI-CORRUPTION POLICIES BEFORE THE EUROMAIDAN

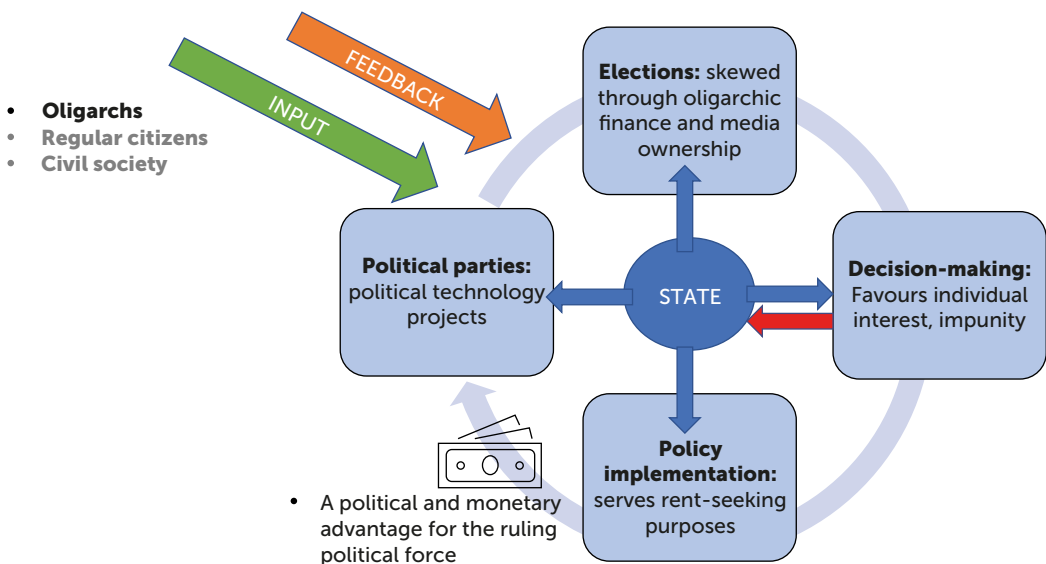
The early 1990s in Ukraine were characterised by high institutional insecurity, a poorly regulated economy, and a struggle between regional groups of influence for political power and the redistribution of economic resources (Minakov, 2019). By the end of the decade, oligarchs had captured most of the political parties and developed patron–client relations with the political leadership. In practice, oligarchic parties ensured support for the president’s initiatives in the parliament in exchange for privileged access to material resources (privatisation of factories, access to natural resources, and so on) and law enforcement protection, subordinated to the president (Huss, 2020: 116–152). As a result, a system developed in which a restricted number of interest groups captured the state, leading to citizens’ needs being neglected (Hellman et al., 2020). Naturally, laws and institutions, including those for anti-corruption, were created

to maintain the political and economic privileges of those in power (see Figure 1).

Under these conditions, the political leadership actively engaged in anti-corruption rhetoric and policies while heavily relying on corrupt practices. The anti-corruption law,² the national programme,³ and action plans against corruption mainly targeted bureaucrats and their engagement in monetary forms of corruption while excluding high-level officials from liability and neglecting social forms of corruption, such as nepotism, patronage, and clientelism. Anti-corruption institutions, such as the Coordination Committee on the Fight against Corruption and Organized Crime and the National Bureau of Investigations, were subordinated to the president, who appointed their directors and decided their structure. Informally, most executive appointments followed the logic of patronalism: only loyal people were assigned strategic positions in the state apparatus. These anti-corruption regulations legitimised the surveillance and selective punishment of disloyal individuals (Leshchenko, 2013) and thus increased the president’s formal and informal powers (Leshchenko, 2011).

Unlike in authoritarian regimes, however, competition between regional clans maintained some sparks of democracy in Ukraine – a space for political opposition and civil society to evolve – culminating in the 2004 Orange Revolution. The pro-Western opposition candidate Viktor Yushchenko saw corruption

FIGURE 1: The pre-Maidan social contract in Ukraine



as a high-level political problem and proposed a comprehensive anti-corruption strategy when he became president in 2005. The new anti-corruption law,⁴ as well as the Anti-Corruption Strategy 'On the Way to Integrity',⁵ were revolutionary. Corruption was recognised as not limited to low- or mid-level public servants but as involving high-level politicians; political immunity was abolished and civil society was empowered for monitoring and control. However, neither the law nor the strategy was implemented properly. The political conflict between three informal groups influencing different branches of power led the government to ignore the action plans for implementing the strategy, and the parliament postponed legislation that would potentially increase the vulnerability of corrupt MPs. Thus, state capture remained in place despite the efforts of the reform-minded political leadership and constitutional change.

When Viktor Yanukovich took office and imposed an authoritarian trend in 2010, law enforcement agencies' formal and informal subordination to him allowed selective coercion. The Ukrainian security service investigated public activists and opposition (Sushko & Prystayko, 2011).⁶ At the same time, the new 2011 law 'On the Grounds of Corruption Prevention and Counteraction' was rendered toothless by its vague definition of corruption, unclear administrative procedures for coordinating anti-corruption tasks and responsibilities between institutions, and violations of the Constitution

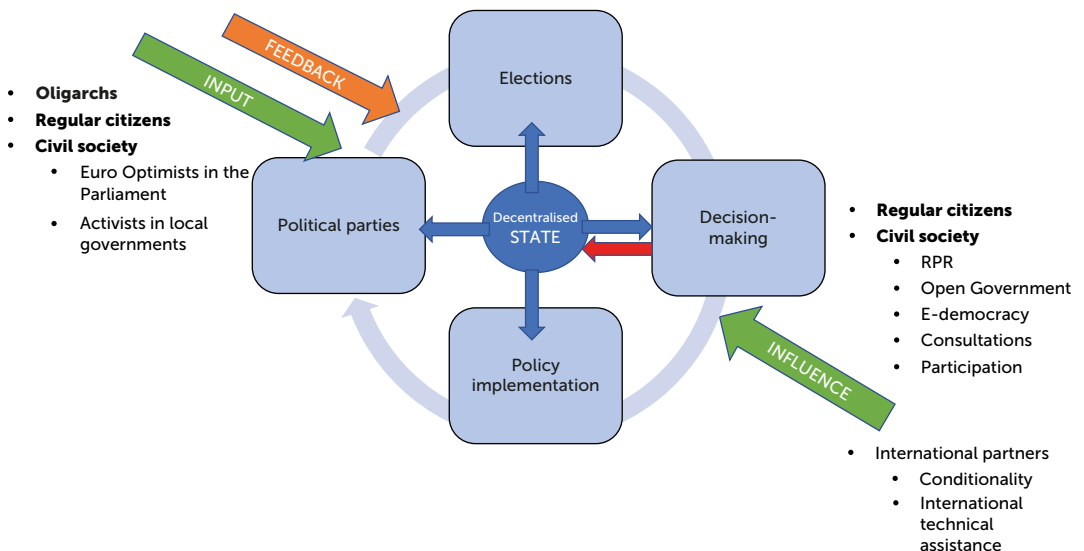
of Ukraine (Khavroniuk, 2012). The new National Anti-Corruption Committee became structurally subordinated to the president,⁷ meaning it was designed to support him in executing his authority in anti-corruption, just as in the 1990s. Some positive reforms promoting transparency in public procurement were quickly rolled back by 'legalising' corruption in the procurement regulations (for example, by allowing one-person bids without competition). Instead of the rule of law, the country has been oppressed by captured law.

SOCIETY-DRIVEN ANTI-CORRUPTION POLICIES AFTER THE MAIDAN REVOLUTION

The 2013–2014 Euromaidan, or so-called Revolution of Dignity, brought about significant structural changes in power relations in Ukraine. Although the patronal actors did not disappear or lose influence (after all, the oligarch Petro Poroshenko became president in 2014), other actors used opportunities to influence politics and press their demands (Magyar & Madlovics, 2022: 228–9, see Table 2). The reforms enabled by these used the so-called sandwich strategy: civil society in Ukraine formulated the demands for and the monitoring of reform, while international actors used the conditionality mechanism, creating pressure from both sides on the state bodies that were reluctant to change (Nitsova, Pop-Eleches, & Robertson, 2018: 6–11).

Using the momentum of the revolution, civil society organisations acted strategically. On the one

FIGURE 2: Post-Maidan social contract in Ukraine



hand, a civic coalition of over 120 non-governmental organisations, public activists, experts, journalists, and researchers developed a package of legislative initiatives to launch the reforms – the Reanimation Package of Reforms.⁸ This package signed a memorandum in support of the Reform Roadmap with major political parties running for elections in 2014. On the other hand, 25 civil society activists became members of the parliament and created an inter-factional union called Euro Optimists (Yaffa, 2016), with the strategic aim to push reforms, including anti-corruption, within the parliament. In addition, the effect of external conditionality was high due to the loans Ukraine was receiving from the International Monetary Fund, while anti-corruption commitments became a requirement to boost Ukraine's relations with the European Union (EU) following the Action Plan in 2010 (Council of the European Union, 2010; European Commission, 2013; EU–Ukraine Cooperation Council, 2013).

While national-level civil society organisations in Ukraine were often criticised as being detached from the grass roots (Beichelt et al., 2014; Solonenko, 2015; Worschech, 2017), decentralisation reforms in Ukraine created structural and institutional opportunities for citizens and activists to engage in decision-making and push for anti-corruption measures in their communities. (See also the contribution by Oleksandra Keudel in this volume.) Ordinary citizens drew closer to political decision-making through increased competencies of local governments and obtained tools to influence the distribution of public resources, which moved significantly from the central to the local level (Keudel & Huss, 2023). At the same time, due to Open Government initiatives,⁹ participation practices, such as citizen consultations, petitions, and participatory budgeting, were institutionalised across the country (Keudel, 2022). The boom in civic tech in Ukraine created digital solutions to coordinate citizen participation and make decision-making processes transparent on paper and in practice.¹⁰ Most non-governmental organisations and grass-roots initiatives engaging in anti-corruption efforts were founded after 2015 (Bader et al., 2019) and contributed significantly to getting anti-corruption onto municipal agendas (Keudel, Grimes, & Huss, forthcoming).

As a result, Ukraine significantly advanced its anti-corruption efforts. Ukraine showed an impressive move towards transparency, gaining a leading rank (from position 17 to 6) compared with other European countries, as the EU Open Data Maturity

Anti-corruption commitments became a requirement to boost Ukraine's relations with the European Union

report acknowledged (van Hesteren et al., 2021). The radical transparency of public budget flows and public procurement transactions, and the obligation of all public officials and members of their families to publish asset declarations, provided an unprecedented foundation for the IT-skilled society to develop numerous instruments for civic monitoring and high-level corruption detection. In addition, e-governance drastically reduced everyday administrative corruption.¹¹

In 2014–2015, the Ukrainian parliament passed a comprehensive package of anti-corruption legislation that took most of the global United Nations Convention Against Corruption requirements into account. According to the latest assessment of the Organisation for Economic Co-operation and Development (OECD), 'Ukraine has made an unprecedented leap in tackling high-level corruption through the work of the dedicated independent investigative, prosecutorial and judicial institutions' (OECD, 2022). One of the outcomes of the anti-corruption reform was the formation of special agencies to prevent corruption (National Agency for Corruption Prevention), investigate it (National Anti-Corruption Bureau of Ukraine – NABU, and Special Anti-Corruption Prosecutors Office), punish it (High Anti-Corruption Court – HACC), and recover corruptly gained assets (Agency for Investigation and Management of Assets). The creation and independence of these institutions were ensured by the involvement of civil society and international experts in their design, leadership selection, and monitoring processes.¹² However, despite the increasing number of convictions in high-level corruption cases concluded by HACC, concerns prevailed that 'high-level corruption remains widespread and the effectiveness of combatting it is being continually undermined in various ways' (OECD, 2022: 6). In particular, the successful attempts to hijack the independent

anti-corruption system by the Constitutional Court of Ukraine in 2020, just as HACC was demonstrating the capacity to sentence its first cases of grand corruption, revealed criminal state patterns in the judicial system (Freedom House, 2021; DEJURE Foundation, 2020).

INSTITUTIONALISED ANTI-CORRUPTION POLICIES DURING THE WAR

The Russian invasion has had implications for corruption and anti-corruption in Ukraine. The protracted crises caused by the war are so significant that the government must collaborate with citizens and international partners if the nation is to survive. Trust is the basis for this collaboration. As a result, corruption has been recognised as a threat to security, while effective anti-corruption measures have become prerequisites for accessing massive external resources for support. At the same time, martial law limits core democratic procedures. Three central mechanisms for holding politicians accountable, according to classical anti-corruption theory – elections, protests, and transparency – are radically limited. Under these conditions, we observe the revival of e-petitions at the local and national levels of governance, partly to push for an anti-corruption agenda.¹³ Among the prominent examples is a petition to the president to restore asset declarations by public officials.¹⁴ The so-called accountability fora, which have emerged from intensive dialogue and collaboration on the basis of common goals, increasingly compensate for the monitor-and-control approach to anti-corruption. This does not mean there is no corruption, but approaches to dealing with it are changing.

Despite all the disruption, anti-corruption has become institutionalised; the special anti-corruption institutions have become even more important as the watchdog functions of civil society have diminished due to the suspension of transparency. In contrast to the previous anti-corruption strategies, driven either by the president or by civil society, the National Agency on Corruption Prevention has been responsible for developing the Anti-Corruption Strategy 2021–2025, indicating the sustainability of the anti-corruption agenda. The OECD has said that the Strategy ‘is evidence-based and targets significant corruption risk areas. Its development has benefited from extensive public consultations’ (OECD, 2022: 4). Importantly, the parliament adopted the Strategy in June 2022 as a requirement for its EU candidate status, highlighting

the effectiveness of the European Union’s conditionality for anti-corruption.

Despite the war, some outcomes of effective anti-corruption actions by special anti-corruption institutions are worth highlighting. NABU has demonstrated in its investigations the fight against systemic, high-level corruption, especially in the case of state capture by an organised crime group in Odesa (NABU, 2022, 2023a) and alleged large-scale embezzlement by the deputy minister of regional development and infrastructure (NABU, 2023b). The agency gave the Armed Forces of Ukraine approximately EUR 50 million (UAH 1.9 billion) of confiscated corrupt funds. HACC passed more sentences in 2022 than in 2021 (34 and 27, respectively); these numbers increased despite HACC’s new jurisdiction in civil confiscation cases and sanctions. An additional EUR 30 million (UAH 1.2 billion) was given to the army as a result of the sentences. All the agencies seem to be carefully tracking their achievements and actively communicating them.

With the massive wave of political dismissals associated with reputational damage of authorities, the country’s leadership is attempting to demonstrate a ‘zero tolerance for corruption’ attitude to persuade partners, Ukrainian society, and international donors to maintain their support. In addition, the dependency of the political leadership on oligarchs is weaker than ever before. On the one hand, oligarchs have lost significant assets in the war, and their economic power has decreased;¹⁵ on the other hand, given the president’s popularity and the so-called single marathon of news, oligarchic media – the primary source of political dependency – have lost their influence and value. As an outcome, the so-called de-oligarchisation law came into force in June 2022,¹⁶ and in November 2022, legal mechanisms were implemented to allow forced alienation of oligarch-owned industrial companies in connection with military necessity (Minakov, 2023).

LESSONS LEARNED AND RECOMMENDATIONS

Since Ukrainian independence, anti-corruption policies and actions have been at the heart of state-building, fulfilling various destructive and constructive functions. The analysis of three stages in anti-corruption policies – instrumentalised, society-driven, and institutionalised anti-corruption – reveals the significant qualitative change with regard to corruption and anti-corruption that must be recognised despite recurring corruption scandals. Some lessons learned over an extended period

allow for recommendations for the mid- and long term for external support to counteract corruption in Ukraine.

Lesson 1: Anti-corruption policy can be instrumentalised under conditions of state capture.

Longitudinal, empirical analysis of anti-corruption policies in Ukraine reveals that anti-corruption is a contested policy field, one reflecting the struggle for influence and defining the social contract. In the early 1990s, even before international anti-corruption regimes were in place, the political leadership relied on anti-corruption policies to increase political and economic domination and to legitimise surveillance and selective punishment. Implementing meaningful change was impossible, as the few had captured political decision-making.

Recommendation 1: Design support around the question: 'What is the opposite of corruption and how can it be reached?'

The normative focus on anti-corruption as a genuinely positive endeavour misses the point that anti-corruption policies can be misused under certain conditions. Analogically, the 'zero tolerance of corruption' trap has the same normative focus on corruption as evil per se and naturally aims at eliminating corruption at any cost (Johnston, 2022). Instead, it is critical to analyse the context and understand which functions (for example, stabilisation, representation) certain forms of corruption fulfil in certain situations. This is not to justify corruption but to avoid the unintended impacts of counteracting it (for example, under some critical conditions, corruption is the only way for citizens to access public services; as a result, eliminating corruption increases citizens' vulnerability). Therefore, corrupt practices should be carefully analysed and, in some cases, contested with what is defined as the opposite of corruption (for example, sustainable and legitimate practices of interest representation, strengthening small and medium-sized enterprises in contrast to oligarchical monopolies).

Lesson 2: Meaningful anti-corruption policies are not the driver but the outcome of the structural changes granting influence to civil society and citizens in political decision-making beyond elections. After the Revolution of Dignity, we observe subsequent changes in the social contract, in which new mechanisms have enabled the direct influence of civil society on political decision-making and institution-building. The anti-corruption strategy and legislation were conceptualised in a way that

gave administrative and criminal liability to all public officials. Special anti-corruption institutions and public monitoring tools were developed to counteract corruption; these had proved effective by 2020. However, the non-reformed judiciary remained the main vehicle for corrupt actors to undermine anti-corruption efforts.

Recommendation 2: Maintain the direct engagement of civil society actors in developing, monitoring, and implementing anti-corruption policies and institutions.

Intensive public consultations on national and local anti-corruption strategies should be maintained. The European Union can influence positive change through conditionality and coordination with civil society in Ukraine. Moreover, the participation of civil society in selecting the leadership of anti-corruption institutions and influential public councils, ensuring societal oversight of the work of institutions, is critical to maintaining their political independence and effective work. (See also the contribution by Sophie Pornschlegel.) Simultaneously, meaningful judicial reform should be prioritised as essential to successful anti-corruption endeavours.

Lesson 3: The significant disruption of the war has limited oligarchs' economic and media influence, while the state has become entirely dependent on societal support within the country and assistance from Western partners. Although martial law has suspended traditional forms of political participation, **political leadership recognises the importance of trust as never before, opening a window of opportunity for alternative mechanisms of social accountability and citizen participation.**

Recommendation 3: Include citizen engagement practices (for example, petitions, consultations, and public audits) **in anti-corruption tools.** The so-called open government practices evolved in Ukraine as opposed to state capture, the severest form of corruption. They are becoming valuable to preserve citizen interest in decision-making and the distribution of public resources in the face of halted elections and limited transparency. Supporting decentralisation helps to boost citizen participation in the fight against corruption. (See also the contribution by Oleksandra Keudel.)

Lesson 4: Anti-corruption institutions have become the main driver behind anti-corruption policies and have demonstrated tangible results.

Credible anti-corruption measures have also become the central condition to access significant resources for reconstruction and recovery. Thus, state agencies and anti-corruption authorities rely on quantitative measurements of their efforts to compete for effectiveness and efficiency. This trend incentivises institutions to detect, investigate, and punish grand corruption. The main challenge to this dynamic is to keep engaging in meaningful corruption prevention, which is difficult to quantify immediately.

Recommendation 4: In addition to punitive measures, maintain corruption prevention measures that can have an effect in the long term and target the creation of integrity as a social norm. Although tangible anti-corruption measures and the evidence that high-level corruption is punished have been long awaited, in the long term and under wartime conditions, the leadership requires high sensitivity to not cross the red line and not turn anti-corruption into a 'witch hunt' for the sake of quantitative indicators. Trust-building remains crucial for social cohesion; it should be prioritised in anti-corruption measures. Measures such as anti-corruption education, collective action, and community-building initiatives for integrity are designed to have a sustainable, long-term effect, but they are difficult to quantify and thus attract less support. To overcome this obstacle, corruption prevention measures must be carefully designed based on scientific research and pre-tests about the effects in a specific context (for example, experimental study). This approach can help avoid the unintended impacts of such measures.

NOTES

The author acknowledges that the research for this article was conducted in the framework of the BIT-ACT project, funded by the European Research Council (ERC) under the European Union's Horizon 2020 research and innovation program (Grant agreement No 802362).

1. An extended version of this argument has been elaborated in the article Huss (forthcoming).
2. Law No. 356/95 'On the fight against corruption', Ukr., <http://zakon3.rada.gov.ua/laws/show/356/95-%D0%BC%D0%BD/ed19951005>.
3. Decree of the President No. 319/97 'On the National Program for the fight against corruption', Ukr., https://zakononline.com.ua/documents/show/174962___523737.
4. Law of Ukraine 'On Grounds of Corruption Prevention and Counteraction,' Engl. version, available at: <https://zakon.rada.gov.ua/laws/anot/en/1506-17>.
5. Decree of the President of Ukraine No. 742/2006 from 11 September 2006, Ukr. 'Pro kontseptsiu podolannia koruptsii v Ukraini 'Na shliakhu do dobrochesnosti' <http://zakon0.rada.gov.ua/laws/show/742/2006/ed20060911?lang=en>.
6. In the first year of Yanukovich's presidency, five incumbents of the former government (including Yuriy Lutsenko, the

minister of the interior) were imprisoned. The former economics minister fled to the Czech Republic to claim political asylum. A criminal case was initiated against Yulia Tymoshenko, the leader of the opposition, on allegations of misuse of political office. At the same time, the government's allies remained untouched, underpinning the argument that the 'fight against corruption' under Yanukovich was used in a selective and politically motivated manner (Dörrenbächer & Oliinyk, 2011).

7. Decree of the President of Ukraine No. 275/2010 from 26 February 2010, Ukr., 'Pro Utvorennia Natsionalnoho Antykoruptsiinoho Komitetu', <http://zakon2.rada.gov.ua/laws/show/275/2010>.
8. <https://rpr.org.ua/en/about-us/>.
9. <https://www.opengovpartnership.org/members/ukraine/>.
10. In 2014–2015 there was a market of digital solutions for municipalities, developing modular platforms for different services, from online streaming of local council sessions to e-petitions, e-consultations, and geo-information systems (GIS). Currently, these services are becoming more centralised in the course of the digital transformation of the country.
11. The corruption perceptions survey of citizens and businesses in Ukraine indicates a decreasing trend in perception and experience of corruption from 2017 to 2022: <https://nazk.gov.ua/wp-content/uploads/2023/04/1f23b766-e031-4c3f-81a4-0167b4f93116.pdf>. The lowest experience of corruption is registered in the provision of public services – the most digitalised sphere of the state.
12. The most prominent example of success became HACC, while its creation procedures have been applied to re-launch the National Agency on Corruption Prevention and ensure independency of NABU (Vaughn & Nikolaieva, 2021).
13. For the example of e-petitions as an indirect tool of anti-corruption see Huss (forthcoming).
14. <https://petition.president.gov.ua/petition/177712>.
15. On the oligarchs' losses, see the chapter by Igor Burakovskyy, Andriy Voloshyn, and Stanislav Yukhymenko in this volume.
16. Law 1780-IX 'On the Prevention of Threats to National Security Related to the Excessive Influence of Persons who have Significant Economic or Political Weight in Public Life (Oligarchs)'.

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The Rule of Law After 2022: New Challenges, New Opportunities?

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<https://doi.org/10.53121/ELFTPS5> • ISSN (print) 2791-3880 • ISSN (online) 2791-3899

ABSTRACT

The rule of law is one of the key concerns in Ukraine's relations with the EU. The 2014 Revolution of Dignity and the signing of the bilateral Association Agreement have fostered the country's reform efforts in this crucial domain. Progress has been made, yet major challenges remain, placing this issue high on the political agenda of European Union (EU)–Ukraine relations. Ukraine's newly acquired candidate status, the EU's financial involvement in the country's defence against Russian aggression, and the future post-war reconstruction process present the second major window of opportunity for a change on this front. This chapter first analyses the post-2014 experience in implementing fundamental rule of law reforms. Second, it analyses major challenges and opportunities that have arisen since February 2022. It concludes with policy recommendations for the EU with regard to supporting Ukraine in achieving compliance with EU rule of law standards and conditions.

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INTRODUCTION

The rule of law is a fundamental governing principle of a democratic society; it is crucial for sustainable long-term economic and social development. Like most transition countries, Ukraine has faced significant challenges on its path towards becoming a functioning democracy with a fair and robust legal system based on the rule of law.

A decisive turn in this respect took place during and after the 2014 Revolution of Dignity, which set the country's political course towards the European Union (EU) and put on the policy agenda the reforms and socio-political processes required for this to progress: free media, transparency, independent judiciary, and proactive civil society and local communities. By mobilising pro-European forces within the country, the dramatic events of 2014 signified a true watershed in Ukraine's democratic transformation.

The signing of the Association Agreement (AA) provided Ukraine with a reform roadmap that is required for further integration with the EU. It sets out clear obligations in the area of the rule of law in particular: judiciary reform, anti-corruption reform, strengthening institutions at all levels of governance, and ensuring human rights. Nevertheless, despite the substantial overall progress achieved in subsequent years, the rule of law remains the key concern on the EU's side when it comes to the functioning of Ukraine's democratic institutions.

The full-scale Russian invasion that began in February 2022 has set in motion another make-or-break stage in the ongoing – and closely linked – processes of Ukraine's democratisation and moving closer to the EU. EU candidate status has moved Ukraine from the neighbourhood into the enlargement basket, with higher expectations especially in the area of the rule of law reforms.

Seven recommendations of the European Commission,¹ of which five concern this domain, clearly signalled the most pressing concerns and reinforced the need to continue with reforms, which can be difficult or unpopular. At the beginning of 2023, Ukraine received the first tranche of the EUR 18 billion support package from the EU, while the remaining amount remains conditional upon the fulfilment of Ukraine's commitment to democratic reform.

It is important to note that the democratic transformation of a transition country, especially in the domain of rule of law, can be a challenging and lengthy process, as was evident in the fifth wave of EU enlargement. Bulgaria and Romania continued to come up short in key areas such as reform of the judiciary and the fight against organised crime and corruption long after they had become members of the EU.

In response to the weak implementation of rule of law requirements in several of the newest Member States, in 2012 the so-called new approach to EU negotiations was introduced,² giving more weight to this part of the accession criteria. In 2020, the European Commission adopted a new enlargement methodology (European Commission, 2020) which reaffirmed the focus on the rule of law, as well as suggesting greater political coordination of the accession negotiations and new instruments to counter backsliding in the reform process. While the revised methodology divides the chapters into six clusters, the rule of law chapters belong to the Fundamentals cluster. The chapters in this cluster are the first to be opened and the last to be closed, with continuous monitoring and assessment taking place throughout the accession process. Progress in their implementation thus determines the overall pace of the accession negotiations.

The experience of the Western Balkan countries also sheds light on the difficulties with compliance in this domain. The states of the region face substantial challenges related to the functioning of the judiciary, freedom of expression and media, anti-discrimination, protection of fundamental rights, and the fight against corruption and organised crime. The EU's support to help countries comply with the accession criteria is provided within the framework of the Instrument for Pre-accession Assistance, of which strengthening the rule of law is one of the essential components.

Despite the substantial support provided by the EU over the years, the European Court of Auditor's Special Report on EU Support to the Rule of Law in

the Western Balkan countries shows that fundamental problems persist. Overall, the audit shows that, while EU action has contributed to reforms in technical and operational areas, such as improving the efficiency of the judiciary and the development of relevant legislation, it has had little impact overall on fundamental rule of law reforms in the region. A key reason for this is insufficient domestic political will to implement the necessary reforms (ECA, 2022: 4). Political will for reforms in the area of rule of law has thus proven to be vital. Pressure can – and should – be applied on the political leadership through strengthening civil society organisations, linking the reforms to political agendas of local communities, and raising awareness among citizens.

Similar to the post-2014 era, the years following 2022 offer a significant opportunity for Ukraine, its government, citizens, and the international community, including the EU, to leverage the current internal situation to advance meaningful reforms and effect transformation. The EU accession process can exert external pressure and offer robust incentives for Ukraine to undertake reforms aimed at bolstering the rule of law. Furthermore, the process of reconstruction can present a chance to tackle long-standing shortcomings within the justice system and enhance the autonomy of both law enforcement and the judiciary.

This chapter analyses the drivers and achievements of Ukraine with regard to implementing the European standards on the rule of law in the post-2014 period, discusses the new challenges as well as opportunities for progress that have arisen since 2022, and provides recommendations on what the EU could do to support the country's progress.

RULE OF LAW IN UKRAINE: PROGRESS SINCE THE 2014 REVOLUTION OF DIGNITY

Since the Revolution of Dignity in February 2014 and the signing of the AA in September the same year, rule of law has been one of the key issues on the government's agenda.

Judicial reform

In 2016, judicial reform was launched with the aim to ensure independence, credibility, and public accountability of the judiciary. The first step was the adoption of amendments to the Constitution of Ukraine (concerning justice) and the revised law on the judicial system and the status of judges by the Ukrainian parliament (Zhernakov, 2016).

One outcome of these legal changes is that parliament no longer has the authority to appoint and/or

dismiss judges; these powers now belong to the High Council of Justice. Moreover, a three-tiered judicial system was introduced comprising local and district courts, courts of appeal, and the Supreme Court of Ukraine. The improved legal frameworks also stipulate that every judge (present as well as future) must undergo a qualification assessment procedure before being appointed or reappointed. The Public Integrity Council was established with the mandate to assist the High Qualification Commission of Judges in determining whether judicial candidates meet the criteria of professional ethics and integrity. Civil society, with representation in the Public Integrity Council, has an important role in the process of qualification assessment of judges.

It remains an open question whether judicial reform has been successful. According to a survey conducted by USAID in 2020, only 10 per cent of Ukrainians trusted the judiciary (USAID Ukraine, 2021), which indicates there is still a long way to go before judicial reform can be considered fully implemented and its goals successfully achieved. Nevertheless, this data has changed dramatically in the past year, as will be discussed later in the chapter.

Preventing and combating corruption

Corruption has flourished in Ukraine for years, making Ukraine one of the most corrupt countries in Europe. However, after the Revolution of Dignity, Ukraine launched a comprehensive set of anti-corruption institutional reforms. In 2014, the parliament adopted the country's first real anti-corruption strategy in line with international best practice.³ In this strategy the parliament declares the fight against corruption to be one of the top priorities for Ukrainian society. The main goal of the anti-corruption reform is to create an effective system to prevent corruption based on the principles of law and order, effective management of public affairs and property, honesty and integrity, and active public control.⁴

During the following two years, three anti-corruption bodies were established:

- the National Anti-Corruption Bureau (NABU), a government agency with a mandate mainly related to investigating corruption and preparing cases for prosecution;
- the Specialized Anti-Corruption Prosecutor's Office, an independent unit of the General Prosecutor, primarily responsible for supporting and overseeing criminal investigations launched by NABU; and

Anti-corruption activists maintained a vigorous advocacy campaign for a robust High Anti-Corruption Court

- the National Agency for Prevention of Corruption (NAPC), a central executive body with special status responsible for the development of anti-corruption policies and the prevention of corruption.

In response to these new prosecutorial and investigative institutions not being seen to be as successful as many had hoped, Ukrainian activists advocated creating a specialised anti-corruption court. The 2016 Law on the Judiciary and Status of Judges authorised the creation of a High Anti-Corruption Court (HACC) but did not provide specific terms for its adoption, and for several years the political establishment resisted calls to create this court. Anti-corruption activists maintained a vigorous advocacy campaign for a robust HACC, enlisting the support of international actors such as the International Monetary Fund, the EU, the World Bank, and other donors. These bodies, though initially reluctant, became indispensable drivers of the effort to create the HACC. In June 2018, after a lengthy political struggle, the Ukrainian parliament enacted a law establishing the HACC. This specialised judicial body, with nationwide jurisdiction over high-level corruption cases, became operational in September 2019.

The Ukrainian parliament has adopted several laws aimed at preventing and combating corruption, including the Law on Prevention of Corruption, which requires public officials to disclose their assets and income, and the Law on Public Procurement, which seeks to increase transparency and reduce opportunities for corrupt practices in the procurement process.

A milestone in the anti-corruption reform was the introduction of e-declarations of assets in 2016. The main objective of assets declaration of public officials is to prevent conflicts of interest, detect unjustified assets, and build broader integrity in the public

sector. In case of a discrepancy between a declarant's income and their properties and expenses, the NAPC calls for disciplinary measures in accordance with the law. Thus, this transparent asset declaration system combines prevention and enforcement tasks.

Fundamental rights

While there are still challenges in protecting fundamental human rights in Ukraine, the country has made significant progress in this area since the Revolution of Dignity. According to Amnesty International (2022: 380 ff), the new government has taken steps to protect freedom of expression and assembly and has worked to combat corruption and ensure greater transparency in government institutions. However, the report also highlights ongoing concerns regarding the protection of human rights, especially in the treatment of prisoners and detainees and the rights of internally displaced persons and those with disabilities.

One of the key strategic decisions made by the Ukrainian government was the adoption of the National Human Rights Strategy in 2015.⁵ The Strategy covers 25 sectors in the areas of civil rights, social and economic rights, political rights, awareness of human rights, and others. The implementation of the Strategy has faced many challenges in terms of preventing and combating discrimination, ensuring the rights of indigenous peoples and national minorities, and protecting the rights of Ukrainian citizens living in the temporarily occupied territories of Donetsk and Luhansk. There has been a general lack of political will to adopt the relevant laws and challenges

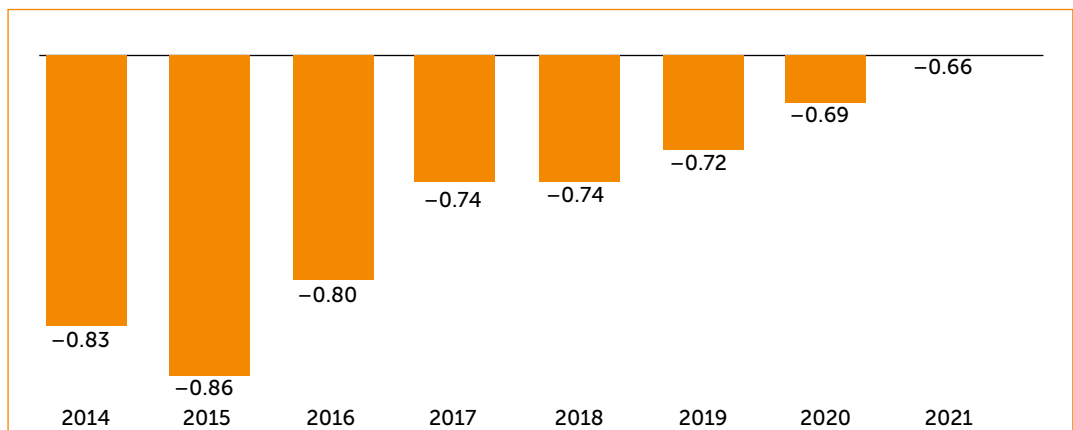
with varying levels of implementation in different regions of Ukraine. However, having such a strategy is an important first step in transparency and monitoring of the implementation of fundamental rights.

Another important institution in the area of monitoring whether fundamental rights are ensured is the institution of the Ukrainian Parliament Commissioner for Human Rights. In accordance with Article 101 of the Constitution of Ukraine, the Ukrainian Parliament Commissioner for Human Rights has the mandate to monitor compliance with established human and civil rights and freedoms by the relevant state bodies.

Reforms implemented? Impact assessment

As a result of these changes, the World Bank's governance indicator for rule of law for Ukraine increased from -0.83 in 2014 to -0.66 in 2021 (Table 1).⁶ This indicator ranges from -2.5 to 2.5 and measures the extent to which individuals and businesses have confidence in and abide by the rules of society, in particular the functioning and independence of the judiciary, the protection of property rights, the quality of contract enforcement, and the likelihood of crime and violence. Moreover, according to the World Justice Project (2022) Rule of Law Index, Ukraine's overall score increased from 0.48 in 2015 to 0.50 in 2022. This index measures eight factors of rule of law and varies between 0 and 1 . Ukraine's weakest area by far is corruption (0.33), while it scores highest in order and security (0.70),⁷ fundamental rights (0.60), and open government (0.56). In these areas, Ukraine scores on the same level as or above several EU Member States.

TABLE 1: World Bank governance indicator for rule of law



A survey conducted by the National Democratic Institute (2021) in Ukraine showed that around half of citizens prioritised equal justice for all (55–59 per cent for women/men) and human rights protection (55–54 per cent). Slightly less than half of citizens prioritised freedom of speech (39–43 per cent) and free and fair elections (37–38 per cent), while governmental transparency (22–23 per cent), governmental accountability (19–21 per cent), and citizens' interests being represented by political parties (13–12 per cent) were given low priority among Ukrainians.

According to the 2021 report on implementation of the AA between Ukraine and the EU in the period 2015–2020, the most progress was made in the areas of justice, freedom, security, and human rights (85 per cent of all tasks were completed). The Ukrainian government has taken important steps towards judicial reform by passing key laws aimed at reforming the High Council of Justice and re-launching the High Qualifications Commission of Judges. However, there are still some challenges that need to be addressed, such as the urgent need for reform of the Constitutional Court. Although a draft law is pending in parliament, it lacks the competitive selection of judges and a temporary increase in the quorum for decision-making, as recommended by the Venice Commission. The legislation related to the NAPC has been largely restored, including deterrent sanctions for submitting false declarations. Additionally, the situation of legal uncertainty for NABU was resolved with the adoption of a new law. On the positive side, there has been progress in the area of digitalisation, with the adoption of a law establishing the legal basis for an e-case management system for anti-corruption institutions. The HACC continues to build a solid track record, and a law on whistle-blower protection has been adopted.

STRENGTHENING THE RULE OF LAW IN UKRAINE POST-2022: CHALLENGES AND OPPORTUNITIES

Despite some progress having been achieved in the past decade, Ukraine still faces several challenges associated with safeguarding the rule of law. Since being granted EU candidate status in June 2022, Ukraine has been actively working on implementing the seven recommendations provided by the EU (Delegation of the EU to Ukraine, 2022). By February 2023, Ukraine had made significant progress in implementing all seven, of which five are focused on the rule of law (New Europe Centre, 2023). The resumption of the work of the High Council

of Justice and the adoption of laws on media and national minorities are notable successes, although further steps are required for full implementation of the recommendations in these areas. Progress has also been made in anti-corruption and law enforcement sector reform, yet, here too, more needs to be done. Unfortunately, the reform of the Constitutional Court of Ukraine has been downgraded, and the status of the anti-oligarch reform remains unchanged due to the absence of the Venice Commission's opinion. Nevertheless, Ukraine's progress is impressive, especially considering the ongoing war, and it demonstrates the country's commitment to reforms and integration with the EU. The report on the implementation of the seven recommendations by the EU is expected in May 2023 (Kyiv Independent, 2023).

In January 2023, Ukraine received the first tranche of an EUR 18 billion support package from the EU aimed at boosting the country's economic and financial stability (European Commission, 2022). The first EUR 3 billion tranche was provided on 'unprecedentedly concessional terms', according to the country's finance minister, Sergiy Marchenko (Euractiv, 2023); however, the remaining EUR 15 billion will only be released after Ukraine fulfils its commitments as outlined in the memorandum of 20 points, divided into four policy areas. One of these policy areas is the rule of law, for which Ukraine must complete several related tasks, including selecting a new director for NABU, approving a strategic plan for comprehensive law enforcement reform, and changing the system for selecting judges to ensure accountability and independence. Deputy Prime Minister Olha Stefanishyna acknowledged that the EU had stipulated conditions for the funding, including a focus on the rule of law and anti-corruption, which have historically been challenging for Ukraine (Euractiv, 2023). Stefanishyna expressed hope that the country would receive the entire EUR 18 billion but warned that the period of unconditional help being given by the EU was now 'history'.

The critical importance of upholding the rule of law is evident in Ukraine's receipt of an EUR 18 billion support package from the EU, which is conditional on the country's commitment to fulfilling several tasks related to the rule of law, demonstrating the crucial role it plays in ensuring financial stability and economic development.

At the same time, the intensity of the country's transformation has opened new windows of opportunity for addressing long-standing concerns.

Challenges

Historically high levels of corruption and undue political influence

Ukraine has a long history of corruption and undue political influence, which has been a major obstacle to its economic and social development and also to compliance with human rights standards. Corruption comes in different forms, and each type of corruption is serious. Tackling all of them is critical to achieving progress and sustainable change. A high level of corruption impedes a country's reform efforts on all other fronts.

Political interference in the judicial and law enforcement process leads to the abuse of power and selective prosecution or the lack thereof. Compromising the judiciary and law enforcement results in citizens losing faith in the ability of the government to act in their best interests and to protect their rights. This can lead to widespread disillusionment with the political system and ultimately to political instability.

The full-scale invasion has increased the risks in this regard. During a conflict as well as in post-conflict environments, there is a risk of increased corruption in general and particularly in political influence in the judiciary and law enforcement (Kondoch, 2015). The Presidential Decree of February 2022 introduced martial law in Ukraine to ensure, among other things, the uninterrupted operation of the legislative, executive, and judicial branches. This included provisions that carry an elevated corruption risk since they remove accountability mechanisms for those persons who are empowered to make decisions under martial law. Beyond these changes to corruption prevention mechanisms, the introduction of martial law also triggered changes that create foreseeable corruption risks. In particular, the Cabinet of Ministers of Ukraine is empowered to determine the specifics of defence and public procurement. It is critical that these restrictions on corruption prevention do not become permanent and that leaders do not give away their increased power once peace is achieved. Both reconstruction and EU accession could be seriously undermined if that is the case.

Regional disparities

Due to its vast and economically and socially diverse territory, Ukraine faces challenges in strengthening the rule of law to meet the EU criteria across the country as well as in maintaining the rule of law during reconstruction. One of the main challenges is to ensure that every region has access to

the resources and institutions needed to enforce the law and provide justice to their citizens. This will require a concerted effort by the government, civil society, and the international community to build the capacity of regional and local legal institutions.

For example, the total number of judicial positions in Ukraine is 6,483. As of 31 December 2022, there were 4,643 judges – that is, only 72 per cent of judicial positions were filled.⁸ The highest degree of vacant positions is in the regions that may experience delays in the processing of legal cases and problems with access to justice in remote parts of the country. Longer waiting times for trials can have a negative impact on the efficiency of the judicial system and the ability of citizens to access justice in a timely manner. This can undermine citizens' overall trust in the country's judiciary.

The destruction of infrastructure and the displacement of people have affected the territory of Ukraine very unequally, thus increasing regional disparities. It has also placed additional strain on local authorities, who must now deal with the challenges of rebuilding infrastructure and providing support for displaced persons.

Additionally, many of the people who have been displaced are professionals in the judiciary, including lawyers and judges, which has put a strain on the legal system. A robust and comprehensive second phase of the decentralisation reform will be needed during reconstruction. It should focus on strengthening local governance during reconstruction, promoting local community participation, and improving service delivery.

Potential political instability

Political polarisation and instability have been persistent problems in Ukraine's post-Soviet political landscape (Hale, 2015). In many cases, political instability during the reform process after 2014 has led to a lack of commitment to reforms, including judicial reform, as competing political factions have prioritised their own interests over the broader goal of establishing a stable and effective public sector and, ultimately, state. In other words, reforms can be comprehensive, but if there is no political stability and the political commitment to reform is superficial, the implementation of reforms may be questionable. Political instability could also damage Ukraine's reputation and reduce the country's ability to attract foreign aid and investment, which is critical to its reconstruction efforts.

Since the start of the full-scale war there has been an unusual level of political stability, with limited

Political instability could also damage Ukraine's reputation and reduce the country's ability to attract foreign aid and investment

internal political disagreement. However, that will most likely change when peace is achieved, and it will be important that Ukraine transforms into a society that is resilient to disagreement and discord and that processes these in a civil manner.

Opportunities

Proactive civil society and a culture of activism

As pointed out earlier in this chapter, Ukrainian civil society and activists have played a crucial role in advancing reforms in the area of rule of law, for example in the establishment of the HACC. This thriving civil society is a significant advantage that can be instrumental in ensuring proper processes for both EU accession and reconstruction. There is growing evidence that the involvement of civil society organisations and independent media can help promote the rule of law and speed up reforms. In addition, civil society organisations and independent media can act as watchdogs by monitoring the government and reporting on any abuses of power or violations of the law and thus ensure the sustainability of reforms. They can also raise awareness among the public about their rights and encourage them to hold the government accountable.

By publishing timely and accurate information about government policies and actions, civil society and the media can hold decision-makers accountable and support the political will for rule of law reforms. Investigative journalists can also investigate institutions that are supposed to uphold the rule of law, such as the police, courts, and prisons. By exposing abuses of power and misconduct within these institutions, journalists can push for reforms to ensure that they are functioning in a fair and just manner. Ukraine's strong and capable civil society and media can also monitor and report on legal procedures and cases, thereby ensuring the rule of law and advocating for it when it is not adhered to.

Upward trend in generalised social trust and public trust in institutions

Generalised social trust as well as public trust in institutions are important cornerstones in building a modern democratic state. This leads to greater compliance with a wide range of public policies, nurtures political participation, strengthens social cohesion, and builds institutional legitimacy. Generalised trust increased in Ukraine from 23.1 per cent in 2011 to 30.1 per cent in 2020, leaving Ukraine on the average level of EU Member States, equivalent to Lithuania (31.7 per cent), with Denmark scoring the highest (73.9 per cent) and Greece the lowest (8.4 per cent) (Ukrainian Centre for European Policy, 2020). Trust in institutions, however, decreased or stagnated in the same period,⁹ although this has changed in the past year as well. In the 2021 survey, 69–75 per cent of Ukrainians did not trust state officials and important rule of law institutions, such as prosecutors' offices, the anti-corruption bureau, and the courts, while this figure decreased to 40–64 per cent in 2022 (Ilko Kucheriv Democratic Initiatives Foundation, 2022). This demonstrates a major shift in public opinion concerning the rule of law. In one year, trust in key institutions increased to around 15 per cent, while 10 per cent of citizens changed their opinion from not trusting these vital institutions to becoming hesitant.

Increasing public trust in institutions is quite unique for transition countries and points to the leverage Ukrainians possess in reforming and reconstructing their country. Governments can achieve more if they know that citizens trust policy-makers and believe they have their best interests at heart. Trust in justice, the legitimacy of judicial institutions, and people's commitment to safeguarding the supremacy of law are especially important for the rule of law. Ukrainian authorities and public institutions can keep this trend growing and cultivate trust by displaying greater transparency, accountability, and integrity. The latter is also vital for gaining the trust of the international community, including donors and EU counterparts.

Digital tools and technologies

Ukraine has one of the strongest IT industries in Europe, if not the strongest, especially in the areas of artificial intelligence and cyber security. In the latter case especially, Ukraine has gained a lot of practical experience in the course of the war. The sector employs around 300,000 individuals and grew by 7 per cent in 2022, despite the full-scale invasion. The IT industry in 2022 paid a record UAH 32.2 billion in taxes and fees to the budget of

Digital mechanisms provide opportunities for a more transparent and open reconstruction process

Ukraine, showing 16 per cent growth since 2021 (IT Ukraine Association, 2023).

One example of how this strong and growing industry has been influencing the public sector and thus the practical implementation of the rule of law is the Diia app.¹⁰ This app is used in government communication and makes it much easier for citizens to interact with the public administration. The system is more advanced than in many EU countries, such as Sweden, where it is necessary to interact on different platforms with each government authority. This greatly reduces corruption since one no longer interacts with individual government officials. The system has proven strong and resilient as Russia has continually attempted to hack it but so far has not succeeded.

The use of digital tools and technologies has the potential to strengthen the rule of law, improve access to justice, and promote transparency and accountability. The implementation of digital technology can enhance the accessibility of justice by providing quicker, more convenient, and cost-effective access to legal information and services. As these resources are made more widely available, citizens can benefit from improved access to justice (Hartung et al., 2022).

Equipping the judiciary with tools for case management, legal research, and decision-making can provide valuable support. With the aid of digital platforms, judges can better manage their case-loads, obtain legal resources, and engage in collaboration with other legal professionals. These benefits can result in a more efficient and effective judicial system (Gurumurthy & Chami, 2019). Furthermore, digital platforms have the potential to gather input from stakeholders and experts while also distributing information about new laws and regulations. This makes them a useful tool for engaging with communities and keeping them informed (Tomlinson, 2019).

Digital mechanisms provide opportunities for a more transparent and open reconstruction process; for example, by utilising digital platforms and databases, citizens and international partners can access information on the use of reconstruction funds.

CONCLUSIONS AND RECOMMENDATIONS

The rule of law can only thrive in a state where decision-makers and citizens collectively recognise its importance and make it an integral part of their legal, political, and social culture (Venice Commission, 2016). Ukraine is currently on the path towards this goal. With some progress having been achieved and some challenges remaining, it is essential that every occasion is used to move forward and keep the dynamic going in a positive direction. Like the post-2014 period, the years after 2022 present a major opportunity for the country, its government, and its citizens, as well as the international community and the EU, to capitalise on the intensity of the internal situation and make a leap towards genuine reforms and transformation.

Upholding the rule of law is crucial for Ukraine's future, as it is a key aspect of the country's integration with the EU. The delivery of the first tranche of the EUR 18 billion support package highlights the importance of fulfilling Ukraine's commitments to rule of law reforms. As the rule of law establishes a fair and equitable environment for both individuals and businesses and promotes accountability and transparency, it is vital for both Ukraine's reconstruction and its integration with the EU. For Ukrainians, ensuring respect of the rule of law throughout these two processes will require a combination of legal instruments, a fully equipped and independent judiciary, effective anti-corruption measures, an engaged and empowered civil society, and a free media. All these elements need to be continuously strengthened and monitored in order to allow the state's mode of functioning to gain in trustworthiness, authorities throughout the country to remain accountable, and the overall positive momentum to keep growing.

At the same time, the EU accession process can provide external pressure and strong incentives for Ukraine to undertake reforms to strengthen the rule of law. Additionally, reconstruction efforts can create a window of opportunity to address long-standing weaknesses in the justice system and to strengthen the independence of the judiciary and law enforcement. By utilising the instruments listed below to enforce the rule of law in Ukraine, the

EU can boost the efficiency of its aid for Ukraine's reforms, fortify the country's institutional capacity, and bolster its ability to withstand both internal and external challenges.

1. Review the structure of EU technical assistance.

In recent years there has been a concentration in international technical aid towards building institutions that implement and uphold the rule of law. The EU could review the structure of technical assistance and work to ensure that it is coordinated, targeted, and effective. This should involve greater collaboration between different organisations and donors, as well as an increased focus on building sustainable capacities in regional and local bodies. A stronger emphasis on monitoring and evaluation of the support provided as well as ongoing reforms to ensure that technical assistance is achieving its intended outcomes is advisable. Civil society could play a vital role in this process.

2. Provide long-term financial and technical support for civil society organisations and independent media. Investing in the culture of the rule of law is a long-term process, but it is essential for building a strong and stable society based on the principles of democracy, fundamental rights, and the rule of law. If an environment is tolerant of corruption or is in the process of becoming so, it is crucial to have a strong, independent, and professional media and civil society. Any technical support provided should always consider how to include civil society and media in the programmes.

3. Foster a culture of transparency and accountability in public institutions. The EU can involve EU experts in designing capacity-building programmes for Ukrainian public officials with a focus on the transparency and accountability of institutions and thus also of civil servants. The methodology of such capacity-building programmes could include training programmes, workshops, and mentoring programmes that can enhance the skills and knowledge of individuals and institutions in Ukraine. Special programmes should also be implemented for institutions that are mandated in the areas of access to public information and data protection.

4. Reform the system of legal education. Institutional reforms are crucial, but the sustainability of these institutional outcomes will depend on the professionals working in the institutions. There is currently momentum to start reforming the system of legal education in Ukraine. Legal education reform should focus on emphasising practical skills development, ethics, integrity,

and professionalism. The EU can use the twinning mechanism to support the reform of legal education in Ukraine by pairing Ukrainian legal institutions with their counterparts in EU Member States. This can serve to transfer knowledge and expertise on EU legal standards, practices, and procedures. The Erasmus+ programme can help students and professors gain experience of and become acquainted with EU legal standards and practices, which can then be transferred back to Ukraine.

5. Navigate the intersection of digitalisation and the rule of law in Ukraine's reconstruction. The EU can promote the use of e-governance tools and technologies during the reconstruction process. The EU has the capacity to extend technical assistance and collaboration to assist Ukraine in creating and executing e-governance tools and technologies. Such aid may involve the exchange of exemplary models, the provision of educational and proficiency-enhancing programmes for government officials, and the allocation of financial backing for e-governance initiatives.

NOTES

1. See https://ec.europa.eu/commission/presscorner/detail/en/IP_22_3790.
2. Ministerial meeting opening the Intergovernmental Conference on the Accession of Montenegro to the European Union (Brussels, 29 June 2012), <https://data.consilium.europa.eu/doc/document/AD-23-2012-INIT/en/pdf>.
3. See https://issuu.com/ethics360/docs/the_draft_law_on_the_principles_of_.
4. Government portal, Anti-corruption reform, <https://www.kmu.gov.ua/diyalnist/reformi/verhovenstvo-prava-ta-borotba-z-korupciyeyu/borotba-z-korupciyeyu>.
5. Parliament of Ukraine website, National Strategy on Human Rights, <https://zakon.rada.gov.ua/laws/show/501/2015?lang=en#Text>.
6. World Bank's governance indicator for rule of law for Ukraine, https://www.theglobaleconomy.com/Ukraine/wb_ruleoflaw/.
7. This factor measures control of crime, civil conflicts, and interpersonal violence and should not be confused with issues related to external factors.
8. High Qualification Commission of Judges of Ukraine, 2022, <https://vkksu.gov.ua/news/stosovno-zvitu-vyshchoyi-kvalifikacijnoyi-komisiyi-suddiv-ukrayiny-za-2022-rik>.
9. See <https://dif.org.ua> and <https://razumkov.org.ua>.
10. See <https://ukraine.ua/invest-trade/digitalization/>.

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Progressive Access to the EU Single Market: Maximising Mutual Benefits Throughout Ukraine's EU Integration Process

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<https://doi.org/10.53121/ELFTPS5> • ISSN (print) 2791-3880 • ISSN (online) 2791-3899

ABSTRACT

Joining the European single market is a strategic task for Ukraine, as it is crucial for both the country's post-war recovery and its further integration into the European Union (EU). The changes that are required for achieving this goal are structural, profound, and long-term. Yet, given the reforms already implemented by Ukraine, significant progress can be made in certain sectors throughout the long accession process. There is potential for enhanced cooperation in facilitating access for Ukraine's goods and services to the EU single market and deepening the cooperation between Ukrainian and European businesses. This chapter first analyses the state of Ukraine's implementation of EU reforms, with the focus on the impact of war on this process. Then it looks specifically at the country's movement towards integration in the EU single market. It concludes with a set of recommendations for EU policy-makers on how to maximise the mutual benefits of cooperation throughout the entire integration process.

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INTRODUCTION

The European Union (EU) single market allows the free movement of goods, services, capital, and persons, where citizens are free to live, work, study, and do business.¹ This means that joining the single market would remove the majority of barriers to intra-European trade in Ukraine's goods, services, and workforce. The EU enlargement methodology includes an Internal Market cluster, which covers nine chapters of the EU *acquis*.² Other clusters of the EU *acquis* also cover areas related to the single market. The movement of agricultural goods is covered by the Resources, Agriculture and Cohesion cluster, while energy and transport services are part of the Green Agenda and Sustainable Connectivity cluster. To participate fully in the single market, a country must implement most parts of the EU *acquis*, with the possible exception of some political chapters.

Although joining the EU single market is part of the negotiation process for EU accession, political statements rather indicate a search for tools to help the Ukrainian economy survive the shocks caused by the war. Movement towards the single market is considered as a parallel process to negotiations, until accession talks reach the relevant level of progress. From this point of view, the free movement of goods and services should be given priority as these are the areas where significant and rapid economic results can be achieved in the short term. Therefore, this chapter focuses primarily on achieving integration in the free movement of goods and services.

Ukraine has implemented more than half of all its commitments under the Association Agreement

Russia's war of aggression has been a significant challenge for the Ukrainian economy. As a result, cooperation with other neighbours, most of which are EU Member States, has become a matter of survival. The path to the EU single market will be a strategic goal for Ukraine as a means to preserve its statehood.

On the one hand, other countries' experiences demonstrate that becoming a part of the European single market can be a time-consuming and laborious exercise, as the legislation and all institutions of the relevant country have to work in line with EU rules. On the other hand, Ukraine's case (spilling its own blood for the future freedom of the whole of Europe) is also unprecedented.

The extension of the single market is a process that benefits all involved. Previous waves of EU enlargement have demonstrated that integration of new countries into the EU boosts exports of existent Member States and helps to strengthen their global competitiveness (European Commission, 2009). Once a country obtains candidacy status, its economy begins to grow at a higher rate, and the level of foreign direct investment (FDI) also increases (Rahman & Fah Jirasavetakul, 2018). The main reason for this is the expectation that the country will become a member of the EU and part of the single market.

It is unlikely that Ukraine's economy will attract a significant amount of FDI immediately after it receives candidate status. Currently, geopolitical and security issues are the main drivers of Ukraine's move towards the EU. However, candidacy status will contribute to the economy's growth when the war is over and the recovery process begins. This will create opportunities for the economies of Member States as well because Ukraine will import more products for reconstruction needs and attract European businesses for its post-war recovery.

The objective of this chapter is to identify potential measures that the EU can implement to

facilitate the sustainable integration of Ukraine into the single market. First, the chapter provides an analysis of Ukraine's implementation of EU reforms and the impact of war on its progress. Then it delves specifically into the country's movement towards integration into the EU, and it concludes with a set of policy recommendations on how the EU can contribute to maximising the mutual benefits of cooperation throughout the entire integration process.

THE ASSOCIATION AGREEMENT AND UKRAINE'S EU INTEGRATION REFORMS

Ukraine started on its path towards inclusion in the European single market in 2016, when the Association Agreement (AA) between Ukraine and the EU came into force. Since that time Ukraine has made considerable efforts to adopt the EU *acquis* in its domestic legislation. Overall, Ukraine has implemented more than half of all its commitments under the AA.³ The level of implementation of the EU *acquis* is even greater in a number of sectors that are essential for acceding to the single market, including free movement of goods, public procurement, company law, food safety, and veterinary and phytosanitary policy.

The volume of Ukraine–EU trade is also rising. Between 2013 and 2021, the EU's share of exports from Ukraine increased from 25.1 per cent to 39.4 per cent. After the free trade regime between the EU and Ukraine entered into force in 2016, the EU's exports to Ukraine almost doubled (from EUR 16.2 billion in 2016 to EUR 28.3 billion in 2021).

Since it was signed in 2016, the AA has been one of the main drivers of reforms in Ukraine. Although the AA has been implemented to a significant degree, there is still work to be done. It is prudent to continue its implementation since the EU *acquis* outlined in the AA will need to be implemented during the accession negotiations. Therefore, until the opening of the relevant negotiation cluster, the AA will remain the primary roadmap for sectoral EU integration reform.

Signing the Agreement on Conformity Assessment and Acceptance of Industrial Products (ACAA Agreement) is a crucial step towards integration into the single market. The ACAA Agreement will make it easier and more cost-effective for Ukrainian exporters of industrial products to access the European market. Initially, the focus of the ACAA Agreement will be on three sectors – low-voltage electrical equipment, electromagnetic compatibility

of equipment, and machine safety – with plans to expand to other sectors covered by the AA. However, Ukraine still needs to implement certain legislation and prepare its quality infrastructure to meet these requirements.

Despite the ongoing war, Ukraine is making progress in adopting and implementing the EU *acquis*. However, there is still much that it needs to do in the area of trade, including:

- Complete the implementation of Directive 94/62/EC of 20 December 1994 on packaging and packaging waste, as well as the Directive on the interoperability of the rail system to cover all sectoral legislation necessary for achieving the free movement of goods.
- Implement Regulation (EU) 2019/1020 to bring the market surveillance regulation in Ukraine in line with the EU *acquis*.
- Adapt the road transport industry to EU requirements for transportation safety, such as periodic roadworthiness tests for motor vehicles (Directive 2014/45/EU) and the use of speed limitation devices for motor vehicles (Directive 2002/85/EC).
- Revise Ukraine's legislation in the fields of veterinary medicine and phytosanitary policy in accordance with the updated EU *acquis*.
- Complete the implementation of Directive 2006/112/EC on the common system of value added tax (VAT) in order to ensure a fiscally neutral environment for trade in goods and services between Ukraine and the EU.
- Prepare and implement a new Customs Code of Ukraine in line with the Union Customs Code (Regulation (EU) No 952/2013).

IMPACT OF THE WAR ON UKRAINE'S ECONOMY AND PROGRESS OF REFORMS

The war has had devastating consequences for Ukraine, resulting in numerous casualties among both civilians and military personnel and causing significant harm to the country's infrastructure and economy. As Ukraine plans to prepare to participate in the single market, these setbacks and the massive destruction it has suffered could potentially slow down the integration process.

One of the most significant consequences of the war is the destruction of vital infrastructure. According to the Kyiv School of Economics' 'Russia will pay' project, as of February 2023, the total cost of damage caused by Russia to Ukraine's infrastructure during the full-scale war was estimated at

USD 143.8 billion (at replacement cost) (Kyiv School of Economics, 2023). This includes damage to the assets of industrial enterprises, energy facilities, transport and telecommunication infrastructure, and even administrative facilities. Restoring the normal operation of public authorities and businesses would require a substantial amount of infrastructure to be recovered.

Furthermore, the relocation of some enterprises to the central and western regions of Ukraine has resulted in the existing infrastructure network no longer representing the actual needs of industry and the population. The war has also led to the loss of personnel by businesses and public authorities due to migration or enlistment in the military. This could have a long-term effect on the market and the competitiveness of Ukraine's economy, as well as the institutional capacity of governmental institutions.

Additionally, the war has caused delays in implementing vital changes and reforms and forced the Ukrainian government to temporarily suspend performance of certain functions. These include:

- postponement of the introduction of 5G technology telecommunications standards;
- suspension of market surveillance measures under martial law; and
- suspension of many transparency-related provisions in the public procurement and defence procurement sectors, among others.

Despite the continuing invasion and the painful rollbacks in certain sectors as a result of the war, Ukraine continues to demonstrate strong commitment to reforms and has demonstrated tangible achievements in the successful implementation of reforms even under martial law. For instance, in 2022 Ukraine joined the European conventions on the common transit procedure and on simplification of formalities in trade in goods. During the war, Ukraine has also managed to adopt a number of laws implementing the EU *acquis*, including on audio-visual services, official statistics, postal communication, and others. Some of these legislations were adopted to meet the seven candidacy requirements set by the EU Commission (Delegation of the EU to Ukraine, 2022). Further steps were also taken to adapt Ukrainian legislation in the fields of agriculture and sanitary and phytosanitary measures to the EU *acquis*.

MOVING TOWARDS THE SINGLE MARKET: THE BEGINNING

As of early 2023, it is not possible to predict when the war will come to an end. Yet it is still possible for Ukraine to take steps towards participation in the single market. However, due to limited resources as a result of the war, Ukraine requires support from the EU.

The EU approved macro-financial assistance for Ukraine and has started to provide EUR 18 billion-worth of support in the form of loans for 2023 (European Commission, 2023). This support is crucial for Ukraine as its budget revenues have declined during the war while its expenses have increased.

Nevertheless, additional financial and technical assistance from the EU may be necessary to address sectoral issues. One such issue is the institutional capacity of public authorities responsible for the regulation of market processes in Ukraine. To work in line with EU legislation and on the same level as Member States' authorities, Ukraine's authorities need to enhance their work. Some issues among Ukraine's public authorities needed to be addressed even before the war, such as the unsatisfactory level of infrastructure, low proficiency of the personnel, and distorted public management procedures. Due to the war, these issues have become more severe. To address these issues, the following steps could be taken:

- Reconstruct and optimise Ukraine's quality infrastructure based on the needs of Ukrainian industry.
- Strengthen the administrative capacity of the State Service of Ukraine on Food Safety and Consumer Protection, which is responsible for market surveillance and sanitary and phytosanitary control.
- Rebuild the customs and border infrastructure to meet security and trade needs.
- Train the personnel of public authorities to improve their level of performance.

An early start to EU accession negotiations will have a considerable positive impact on Ukraine's integration into the EU single market. According to the new EU enlargement methodology, in order to move towards integration into the single market, a candidate country must first demonstrate progress in the Fundamentals cluster (which includes, inter alia, achievements in the rule of law, the judicial sector, justice, freedom and security, public procurement, and financial control).

At first glance, the initial stages of negotiations are not directly connected with freedom of movement

An early start to negotiations could contribute to a favourable environment for post-war recovery

of goods and services (as would be expected from European single market integration). At the same time, the Ukrainian business community is highly interested in implementation of the rule of law reforms. For example, according to a survey conducted by the American Chamber of Commerce in Ukraine, 93 per cent of the member companies agreed that 'implementation of real and effective judicial reform, rule of law, fair justice, and eradication of corruption' is No.1 strategic step Ukraine's Government should take first to achieve economic growth and improve the business climate' (American Chamber of Commerce Ukraine, 2021).

Undoubtedly, a fair and transparent judicial system governed by the rule of law can boost trade. That is why Fundamentals reforms may be crucial for Ukraine's economic development and European business investments in Ukraine. Thus, an early start to negotiations could contribute to a favourable environment for post-war recovery.

At the same time, for successful integration in the EU accession negotiations, it is crucial that the benchmarks for Ukraine (which it is supposed to achieve under the EU enlargement methodology) are set in a realistic, quantifiable, and measurable manner. This will ensure that these benchmarks are an ambitious but achievable aim, rather than an obstacle for the progress of Ukraine's integration into the EU internal market.

Elimination of trade barriers for the duration of the war and the reconstruction period. 2022 was a very difficult year for Ukraine's businesses and economy. In that year, Ukraine exported USD 44.1 billion-worth of goods, which is 35 per cent less than the volume for 2021, while imports decreased by 19.6 per cent (USD 58 billion).

The EU's share of Ukraine's trade increased both in exports of Ukrainian goods and in imports from the EU. In 2022, 63 per cent of Ukraine's exports

went to the EU.⁴ In comparison, in 2021, prior to the war, exports to the EU were only 40 per cent. Ukraine has become very dependent on trade with the EU as its seaports have been blocked (except for the Black Sea Grain Initiative) and trade flows are possible only through the western border of the country.

The commodity structure of Ukrainian exports to the EU has shifted towards agro-industrial products, while the export of metals has dropped. After two large steel works in Mariupol (Azovstal Metallurgical Combine and Illich Iron and Steel Works) were destroyed and the seaports were blocked, exports of metal decreased drastically.

The main change in the trade structure of imports was the rapid growth of supplies of fuel from the EU. Its share increased from 11 per cent in 2021 to 23 per cent in the eight months of 2022.

As Ukraine's seaports remain blocked (as of early 2023) and the possibilities to trade with other countries are limited, prolongation of the abolishment of trade restrictions on goods from Ukrainian producers (Regulation (EU) 2022/870) for the duration of the war is critical to Ukraine's economic survival. While the European Commission has prolonged Regulation (EU) 2022/870 until 5 June 2023,⁵ it will undoubtedly need to be extended even further.

Simplification of border controls for goods. While Ukraine is not part of the customs territory of the EU, it is necessary to look for opportunities to simplify border formalities and speed up the customs clearance of goods.

Due to the war, the movement of goods by sea and air transport is practically blocked. The volume of transportation by road is growing, leading to queues at the border and an increase in the duration of customs clearance. Therefore, any measures aimed at simplifying customs clearance at the border between Ukraine and the EU will be useful both for Ukrainian businesses that supply goods to the EU and for European businesses that export to Ukraine. One possible solution may be joint customs control at the border. Border delays are especially critical for e-commerce, as small and medium-sized businesses typically operate there.

SINGLE MARKET INTEGRATION: MID- AND LONG-TERM MEASURES

During the next three to five years, Ukraine will need to proceed with the further adoption of the EU *acquis* and implementation of the EU's best practices in public administration.

Development of joint infrastructure projects. Projects could be carried out in a number of sectors to increase economic integration between Ukraine and EU Member States, including:

- energy: expansion of the capacity of interstate crossings with Poland, Romania, Slovakia, and Hungary to increase the reliability of the operation of the unified energy system of Ukraine; development of projects in green energy (renewables and hydrogen production);
- transport: development of infrastructure for the further functioning and upgrading of Solidarity lanes as the only possible route for the export of non-agricultural products from Ukraine; enhancement of the capacity of Ukrainian ports on the River Danube; construction of a railway between the Baltic Sea and Odessa ports.

Border protection measures aimed at a more secure single market (customs and border control). Even when the war comes to an end, the security issues on the eastern border of Ukraine will still be on the table, although the severity of those issues will depend on the outcome of the war. However, when Ukraine becomes a full member of the EU, the northern and eastern borders of Ukraine will be a part of the common EU border. The security challenges for the single market (even after hostilities end) may be similar to those that currently exist on the border of Ukraine and the unrecognised Transnistria, such as smuggling (including cigarettes, drugs, and excise goods), illegal arms trade, cross-border VAT fraud, and trade of goods that do not meet EU market surveillance standards. For this reason, customs reform in Ukraine will be crucial for the security of the EU single market. Technical assistance for customs reform, as well as the EU's interest in reforms on Ukraine's border, should be the focus. The EU and Ukraine both need for the administrative capacity of Ukrainian customs authorities to be enhanced to bring their activities in line with the EU Customs Blueprints. The EU might consider allowing Ukrainian customs authorities to participate in joint programmes (e.g. Customs Action Plan) in order to prepare to 'act as one' with their EU colleagues.

Involvement of European business in the reconstruction of Ukraine. In 2021, Ukraine's GDP was USD 200 billion.⁶ In 2022, it decreased by 30.4 per cent. In November 2022, the cost of the physical

Customs reform in Ukraine will be crucial for the security of the EU single market

damage to Ukraine's infrastructure was estimated at USD 136 billion.⁷ As of February 2023, the World Bank (2023) estimated that Ukraine's recovery and reconstruction needs amounted to USD 411 billion. Domestic resources alone will not be able to finance the large-scale reconstruction of damaged infrastructure and industry, so Ukraine will have a keen interest in European businesses being involved in the reconstruction.

But European businesses that might be interested in participating in the reconstruction of Ukraine will feel the pressure of high uncertainty and face significant risks. Programmes to guarantee European investments in Ukraine could be established to assuage these concerns and attract European companies to assist in Ukraine's recovery, as well as to protect their investments.

The participation of European businesses will also be useful for introducing European business practices and traditions into the Ukrainian economic environment, as well as for establishing strong economic connections between Ukraine and EU Member States.

Adaptation of the economy and society to the European Green Deal. The reconstruction of Ukraine after the war should be based on resource efficiency and reduction of damage to the environment. The goal of creating a carbon-neutral economy requires heavy reconstruction and modernisation of the energy, steel, and other industries. Agriculture will also need to be transformed.

Achieving ambitious goals will require both legislative changes and investments in the green economy. Ukraine will need to implement a carbon emissions trading mechanism. It will also be necessary to modernise housing and industry to enhance energy efficiency.

Small and medium-sized enterprises in agriculture and the processing industry may appear to be the most vulnerable to the changes, as they are less technological and have limited access to financing.

These businesses will need affordable financial tools for technological upgrading.

In the longer term, Ukraine should build reliable mechanisms for its complete integration in the single market. It should be noted that due to the difficult economic and social situation (a 30.4 per cent decrease in GDP is expected in 2022, and an unemployment rate of more than 30 per cent) (National Bank of Ukraine, 2022), Ukraine may need special conditions or grace periods for EU integration reforms in certain sectors.

Reforms in the field of competition and state aid are likely to be among such sectors. Ukraine has already demonstrated some progress in this field. In 2017 the relevant law came into force, and the Antimonopoly Committee of Ukraine has started to enforce state aid cases. But the current law is not fully in line with the EU *acquis*, and as a result many cases of state aid are not covered by the supervision of the Antimonopoly Committee. Thus, further improvements in state aid regulation are needed.

However, often the recipients of state aid in Ukraine are utility companies that suffer from low tariff levels for their services. However, due to a significant reduction in income and a high level of unemployment, the population will not be able to pay more until the welfare situation improves.

Ukrainian businesses have also suffered significant losses due to the war (physical destruction of assets, complicated export logistics, limited access to financing, limited electricity supply, etc.). Naturally, government incentives will be required in the coming years to support their activities. Regardless of the impact on competition, it is important for Ukraine to maintain entrepreneurial activity.

Therefore, the timeline for reforms in competition and state aid have to comply with economic realities. That being said, as soon as the economy begins to recover, the EU legislation in the field of state aid must also be implemented in order to ensure the capacity of the Ukrainian economy to cope with competitive pressure and market forces.

CONCLUSION AND RECOMMENDATIONS

The process of Ukraine joining the EU will not be quick, considering the scope of what needs to be done for this to happen. However, there is potential for enhanced cooperation and mutual benefits for both sides through certain measures during the integration process.

The pace of accession to the single market will depend on many factors, including the duration of the war, the level of economic growth in the post-war recovery period, and the rate of return of migrants who fled the war, among others.

Given the reforms already implemented by Ukraine, significant progress can be made in certain sectors even before the end of the accession negotiations. Integration into the EU internal market, in addition to the direct implementation of EU legislation, should include joint projects and deepened cooperation at the level of Ukrainian and European business.

Ukraine's integration into the EU single market will take place simultaneously with its post-war reconstruction and recovery. It is obvious that success in one aspect will increase the efficiency of the other. The presence of European businesses in Ukraine via joint infrastructure projects will contribute to the introduction of European cultural and business practices into the Ukrainian economy and will therefore act as a catalyst for further reforms. For European businesses, participation in the reconstruction of Ukraine may also be interesting, especially considering the prospect of Ukraine joining the EU.

Recommendations

1. The European Commission should encourage Ukraine to continue implementing the EU *acquis* covered by the Association Agreement until the start of the negotiation process in the relevant negotiation cluster.
2. The European Commission should encourage EU Member States to implement programmes that provide guarantees for EU businesses intending to invest in Ukraine. These guarantees should be aimed at reducing military risks for investors. Additionally, investment guarantee programmes should consider the EU's objectives for sustainable development. For example, guarantees should be provided for projects related to the development of organic farming, renewable energy, and so on.
3. The EU should continue to expand its transportation infrastructure to better integrate Ukraine into trade flows. Implementation of joint infrastructure projects with Ukraine should be a matter of mutual interest. One such project could be the construction of a railway track of European standards connecting ports on the Baltic Sea with the seaport in Odessa.
4. The EU should proceed towards the conclusion of the ACAA agreement with Ukraine, with the goal of streamlining trade in industrial goods.
5. The EU should take steps to start access negotiations with Ukraine, as this would provide additional motivation for Ukraine to implement important rule of law reforms, which is crucial for economic growth and development. To ensure successful EU accession negotiations, it is recommended that realistic, quantifiable, and measurable benchmarks in the Fundamentals cluster be set for Ukraine, which should be ambitious yet achievable to prevent them becoming obstacles to its progress.
6. EU Member States that neighbour Ukraine should be encouraged to simplify customs and border controls, including joint customs control at the border, to reduce delays and queues.
7. Further prolongation of the elimination of trade barriers for the duration of the war and the reconstruction period will be needed to support Ukraine's economy. Ukraine's economy is highly dependent on trade with the EU due to logistical restrictions. Trade with non-EU countries has experienced a decline in 2022 and is not expected to recover until maritime transport resumes normal operations for all types of goods.
8. Ukraine should be engaged in the European Green Deal Policy, including through relevant financial tools and the provision of technical assistance in relevant EU *acquis* implementation. The post-war reconstruction of Ukraine should take into account the goals of climate neutrality, and joint energy and infrastructure projects should align with the goals of the European Green Deal Policy.
9. Small and medium-sized enterprises in the agricultural and industrial sectors will require assistance to adjust to the EU's stricter requirements concerning safety standards, ecological measures, and consumer protection. Additionally, they will face greater competition once all trade barriers are eliminated. Given the limited access to financing in a country affected by war, financial support instruments for small and medium-sized enterprises would be appropriate.
10. Successful integration into the single market requires significant improvement in the institutional capacity of all Ukrainian authorities responsible for market regulation and the economy. Among such authorities are the State Service of Ukraine on Food Safety and Consumer Protection and other authorities responsible for market surveillance and sanitary and phytosanitary control; the State Customs Service of Ukraine; and the State Tax Service of Ukraine. To enhance the performance of state authorities, it is necessary to elevate the professionalism of personnel, public management procedures, and

relevant infrastructure to a higher level. To achieve this goal, the following steps can be taken:

- Set up relevant training programmes (including ‘train-the-trainer’ type programmes) for Ukraine’s public servants. These programmes must be aimed at transferring relevant knowledge, skills, and work practices from Member State authorities and EU Commission experts to Ukraine’s public administration. This will enhance the awareness of Ukraine’s public servants regarding EU law and the functioning of Member State authorities within the EU common market.
- Support the modernisation and development of relevant infrastructure, such as facilities, laboratories, IT products, and so forth.
- Encourage Ukraine’s public authorities to demonstrate leadership and the political will to improve public management procedures.

NOTES

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Ukraine's Reconstruction: Strong Local Self-Governance as a Prerequisite for Democratic Development

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<https://doi.org/10.53121/ELFTP5> • ISSN (print) 2791-3880 • ISSN (online) 2791-3899

ABSTRACT

Ukraine has been implementing decentralisation reform since 2014 by shifting resources and powers from central to local authorities. The reform has been praised as one of the most successful among Ukraine's post-Euromaidan (2014) reforms. Since the start of Russia's aggression against Ukraine in February 2022, local authorities have found themselves on the front line of the war response. At the same time, they face the challenges of decreased revenues and the partial shift of powers to the central level or to the newly created regional military administrations. This raises concerns about decentralisation and democratic backsliding. This chapter analyses the decentralisation reform in Ukraine; the developments at local and regional levels since the start of the Russian war against Ukraine; and the need for international assistance to ensure transparent, accountable, and inclusive reconstruction while defending the decentralisation reform gains.

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STRONG LOCAL SELF-GOVERNANCE: A BASIS FOR A PATH TO DEMOCRACY

Local self-governance reform in Ukraine has been one of the key elements in Ukraine's democratic development since the 2014 Revolution of Dignity, which has served as an example for the wider region (Erben & Kobakhidze, 2022). A set of decentralisation reforms have contributed significantly to the consolidation of local democracy, strengthening self-governance and the overall resilience of the country's local communities (ECR, 2022: 4). The European Commission called it 'one of the most impactful and successful reforms implemented in the country' in its opinion on Ukraine's application for membership of the European Union (EU) (EC, 2022: 7). Ukrainian decentralisation reform is based on the European Charter of Local Self-Government, a broad framework giving freedom to each country to implement it in their own way. Ukraine followed a unique path, relying on the best practices of voluntary amalgamation by Scandinavian countries and the local communities oversight system of the Baltic states, France, Germany, and Poland (NEC & EEIS, 2020: 9).

The decentralisation reform started in 2014 after the Revolution of Dignity with the ambition to empower local self-government and redesign the administrative and territorial set-up to improve the capacity of the state to deliver public services to the citizens (Romanova & Umland, 2021: 3). Ukrainians have clearly demonstrated their EU aspirations, and greater political pluralism has generated societal demand for a revised division of power between the central and local levels of government (Romanova & Umland, 2021: 3).

Prior to the introduction of the reforms, power in Ukraine was highly concentrated. Administrative and budgetary control was in the hands of the central authorities represented at the oblast (region) and rayon (district) level. Local councils had very few financial resources and no executive power, which limited their ability to make decisions in the interests of the community. In addition, Ukraine was functioning according to outdated Soviet-era administrative divisions,¹ which resulted in huge demographic, fiscal, and administrative imbalances among regions (CMU, 2020).

By February 2022, the reforms had made significant progress in both administrative and fiscal terms. In the basic tier, new administrative units called amalgamated territorial communities, or *hromadas* in Ukrainian, were created. The number of local councils was decreased from 10,278 in 2014 to 1,470 in 2020 (CoE, 2022: 3). The essential element here was the voluntary territorial amalgamation of municipalities,² which has contributed to the development of local democracy (Romanova & Umland, 2019: 4). The new administrative entities at the local level gained substantial financial competencies, retaining 60 per cent of personal income tax,³ and they became eligible for state budget transfers, in particular for education and healthcare service provision. Amalgamated communities became responsible for over 31 per cent of all public expenditures (12.5 per cent of GDP), which placed Ukraine's decentralisation level above the average for the 36 OECD member states (CoE, 2022: 3). *Hromadas* were also granted greater decision-making autonomy, in particular in administering their own local service delivery, exercising external borrowings, managing city planning, and regulating the use of land. The changes paved the way for sectoral reforms in healthcare, education, culture, social services, and energy efficiency at the local level.

An essential part of the decentralisation reform was the establishment of around 1,000 local 'one-stop-shop' administrative service centres that provided quality services to citizens and businesses across Ukraine by 2021 (EC, 2022: 7; Minregion, 2021). The decentralisation reform served its purpose and resulted in better service provision and citizen satisfaction: over 70 per cent of the municipalities surveyed in 2021 by the OECD reported improvements in the quality of administrative and social services (OECD, 2022: 4).

The reform has received unprecedented international technical and financial support from the EU and its Member States through the U-LEAD

project,⁴ a multi-donor programme initiated by the EU and Member States Denmark, Estonia, Germany, Poland, Slovenia, and Sweden (Romanova & Umland, 2019: 6–7).

THE EFFECT OF RUSSIA'S WAR ON UKRAINE'S REGIONS

The economic and social challenges in Ukraine caused by Russia's invasion are huge: 13 million people were displaced during first two months of the war, of whom 7.7 million moved internally (UN, 2022). Ukraine's GDP declined by 30.4 per cent in 2022; revenue collection declined substantially while expenditures almost doubled (CMU, 2023).

Local municipalities have been affected in a different way by Russia's invasion of Ukraine. Many *hromadas* in the north, east, and south of Ukraine that have been under Russian occupation or close to the front line have suffered huge losses of human life and massive destruction of homes and critical infrastructure (OECD, 2022: 1). After liberation, the *hromadas* must deal with the humanitarian crisis with limited access to essential services including food, healthcare, water, and electricity. These municipalities saw a high outflow of the working-age labour force, leading to the decline of business activity and local revenues.⁵ At the same time, municipalities in the west and centre of Ukraine have received millions of internally displaced persons (IDPs), providing them with shelter and food. According to the Rapid Damage and Needs assessment prepared jointly by the World Bank, the Government of Ukraine, and the European Commission in August 2022, the most affected oblasts are Donetsk, Luhanska, and Kharkivska, followed by Kyivska, Chernihivska, and Zaporizka (WB, GoU, & EC, 2022: 6).⁶ With the start of Russia's massive attacks on energy infrastructure in October 2022, local communities had to overcome the challenge of finding solutions for independence from the centralised energy supply (Zhalilo, 2022).

In most Ukrainian cities, the local authorities elected democratically in October 2020 based on the new territorial division stayed with their communities and did not switch their support to Russia (Romanova, 2022). The trust that they received from the people was fully justified: the overwhelming majority of local councils continued to perform their duties after the war began, sometimes even under Russian occupation (Koliushko, 2022). They kept providing services to citizens and responded to the new challenges by supporting the army, organising territorial defence units, accommodating IDPs, and addressing winterisation needs.

The newly created *hromadas* have been key to the democratic transformation of Ukraine

To undermine local administrations in the occupied territories, Russia is resorting to the abduction and detention of democratically elected city majors, trying to force them to collaborate or replacing them with officials loyal to Russia (CEMR, 2022). At the end of December 2022, Kyiv city mayor Vitali Klitschko reported that since the start of the war, 30 city mayors had been kidnapped, seven of whom are considered to be missing (Lebedina, 2022).

The newly created *hromadas*, with democratically elected representatives, high levels of trust among citizens, and resources at hand to implement decisions in the interests of their communities, have been key to the democratic transformation of Ukraine. Those involved in the implementation of the local self-governance reforms see them as an essential part of the process of adopting EU standards. The reforms strengthen democracy from the ground up, as local residents gain additional leverage in decision-making processes (NEC & EEIS, 2020: 5).

DECENTRALISATION REFORM: BUILDING STRONG AND WAR-RESILIENT REGIONS

Decentralisation reforms have empowered the Ukrainian regions by giving them more decision-making powers as well as financial resources. This contributed to a stronger response to the war at the local level in the first weeks of the war, when the actions of local actors were crucial in pushing back against the Russian armed forces. While most international organisations were caught off guard by the invasion, taking several weeks to readjust their programming, local non-governmental organisations, church groups, and around 1,700 newly created local aid groups, together with local authorities, pooled their personal resources to respond to the immediate needs of their communities (UKHIIH, 2022: 3).

According to Romanova & Umland (2019: 4), the decentralisation reform counteracted federalisation and separatist tendencies by strengthening the

cohesion of, and facilitating new horizontal connections among, the Ukrainian regions (see also Zhalilo, 2019: 3). These ties have been key to the *hromadas'* mutual support at critical points in the Russian invasion, in particular during the first months of the war. As such, 94 per cent of communities reported having relied on horizontal partnerships in response to war-related crises (ECR, 2023: 28). The administrative service centres established earlier were used to register IDPs, provide them access to social benefits, and coordinate humanitarian aid (OECD, 2022: 1).

As a multifaceted process involving engagement of parties at all levels, decentralisation reform fostered a spirit of cooperation between local authorities, civil society, and international donors, which served as a good basis for developing a joint response to the war. The unity of all local actors in the context of defending their country, and their sense of ownership and responsibility, have paved the way to further democratic development in Ukraine.

CHALLENGES TO LOCAL SELF-GOVERNANCE REFORM IN VIEW OF THE CENTRALISATION OF POWER UNDER MARTIAL LAW

The Russian invasion of Ukraine has posed certain challenges to democratic governance at the local level, including the following:

- Due to wartime needs and security demands, the government of Ukraine imposed restrictions on some constitutional rights and freedoms such as freedom of movement and freedom of assembly in certain cases; closed public registries;⁷ limited public access to parliamentary sessions; and forbade elections, referendums, protests, and strikes (CoE, 2023: 14).
- Military administrations were established in each oblast and rayon,⁸ taking over some powers from elected authorities. While the military administration and city mayors work jointly, the latter are subordinate to the former (Romanova, 2022: 6).
- At the local level, decision-making has been centralised with the heads of the *hromadas* because local councils often lack a majority as many elected representatives have been displaced by the war (Lavreniuk, 2022).
- Since the start of the war, the dialogue between national and subnational levels of government has been limited, as key coordination bodies (e.g. the Inter-Departmental Co-ordination Commission for Regional Development) have either not been fully operational or lack the systematic participation of municipal governments (OECD, 2022: 4).

- The decentralisation reform had not yet been completed when the war began. The changes to the administrative and territorial set-up, and the redistribution of power between the tiers, that has been taking place since 2014 still need to be incorporated in the constitution, which cannot be done under martial law (CoE, 2022: 7). Among the most important issues to be legally regulated are the clear delineation of tasks and responsibilities among different administrative levels (horizontally) as well as between locally elected and central authorities (vertically), in particular in the areas of education, healthcare, roads, transport, and energy (OECD, 2022: 4).
- Clarity in the delineation of tasks and responsibilities among the administrative levels may be critical to effective reconstruction at the local level, in particular in the areas of roads, transport, and energy. Thus, the lack of clarity may lead to uncoordinated action, or inaction on the part of different governmental actors (OECD, 2022: 4).
- Many *hromadas* have suffered so much destruction by Russia that they have disappeared from the map of Ukraine; after the active military phase comes to an end, a new territorial division of Ukraine will need to be developed (PGA, RISE UA, & HC, 2023).
- Local self-government has not been properly included in the design of the National Recovery and Development Plan, which is the key document developed by the central Ukrainian government for its dialogue with international partners on the country's recovery and reconstruction needs. At the same time, municipalities serve as key partners in the reconstruction and recovery effort by identifying local investment and reconstruction needs (OECD, 2022: 1).

The set of decentralisation reforms in Ukraine was a way of strengthening democratic and transparent governance in Ukraine (ECR, 2021). It marked a departure from centralised, Soviet-style management in favour of strong and empowered local self-governance taking decisions in the interest of their communities. While the decentralisation reform has not been made a condition of Ukraine's closer relations with the EU, the freedom in decision-making, better services delivery (hospitals, road repair, etc.), and the creation of new jobs were considered by Ukrainians as signs of successful European integration (NEC & EEIS, 2020: 5).

The reform was instrumental in building the country's resilience at the regional level against Russia's

The set of decentralisation reforms in Ukraine was a way of strengthening democratic and transparent governance in Ukraine

invasion. Local communities received stronger financial and administrative powers that enabled them to better respond to emerging needs and protect civilians (OECD, 2022: 2). At the same time, Russia's war of aggression affected democratic governance at the local level by introducing recentralisation tendencies. Ukraine will require constant support to preserve and enhance the achievements of the decentralisation reform as a prerequisite for a long-term democratic transformation and inclusive and sustainable development.

POLICY RECOMMENDATIONS FOR THE EU

Regardless of how long the Russian war of aggression lasts, there is a need for continuous support for local self-governance in Ukraine. Securing and developing the gains of the decentralisation reform in Ukraine will ensure the country remains on the path to democratic development, with strong and transparent governance at the local level that is responsive to people's need. To proceed with this, EU actors at different levels should take the following actions:

- Engage with a wide circle of actors at the local level in Ukraine, including authorities, civil society organisations, and business communities, in order to be well informed about developments and to be able to shape European support to Ukraine in line with actual needs.
- Advocate for the following legislative changes:
 - Delineate a clear separation of tasks and responsibilities among different administrative levels (horizontally) as well as between locally elected and centrally represented authorities (vertically) in all sectors, including education, healthcare, transport, energy, roads, and others (OECD, 2022: 4).

- Once martial law is lifted, enshrine in the constitution of Ukraine the actual changes to the administrative and territorial structure as well as the division of powers between different levels of governance in Ukraine that have taken place since 2014, in order not to backslide on the achievements of the decentralisation reform (CoE, 2022: 6).
- Ensure that the subordination of local self-governance to the regional military administration, enacted under martial law, does not become the new normal in the post-war environment; there should be a transition of powers from the military administrations to the local self-governance level in order to ensure democratic governance (CoE, 2022: 6–7).
- Call for democratic decision-making to be restored at the local level by transferring power from the head of the local community back to the democratically elected local councils representing people’s choice (CoE, 2022: 7).
- Restore political pluralism at the local level by ensuring an environment conducive to competitive and fair local elections.
- Urge that Ukrainian regions and municipalities are involved in the planning process for immediate support as well as long-term strategies developed by the central government so that the recovery implementation and funding mechanism reflect specific regional and local needs and assets (OECD, 2022: 5). As the President of the European Committee of the Regions, Vasco Alves Cordeiro, suggested at Ukraine’s Congress of Local and Regional Authorities on 4 March 2023, Ukraine’s local and regional governments could be in the ‘vanguard of development’ of the country’s reconstruction (ECR, 2023).
- Encourage the Ukrainian central government and parliament to include local authorities in their decision-making to ensure that it is participatory, which can be done by sharing examples from European countries.
- Suggest that recovery and reconstruction at the local level is driven by local communities and not imposed by the central government to make implementation as efficient as possible; Ukrainian municipalities should start developing complex reconstruction plans as early as possible and in consultation with the community. The plans could be presented to the central government, donors, and investors (Ukrinform, 2022).
- Ensure that the gains of decentralisation reform in Ukraine are not lost but expanded upon, with the post-war recovery being built on the principles of inclusion and civic participation.
- Continue to support civil society at the local level as an important driver of democratic changes. As veterans in their respective fields, civil society organisations can serve as the core while helping to create new groups to operate throughout the country at the local and regional levels (Zhernakov, 2022).
- Call for a simplified engagement mechanism with Ukrainian partners at all levels, removal of bureaucratic obstacles, and sufficient resources to enable EU institutions, European municipalities, and regions to help their Ukrainian counterparts in their reconstruction efforts, as well as an inclusive approach in order to preserve coherence in Ukraine’s sustainable territorial development (ECR, 2022: 5).
- Maintain peer-to-peer support between Ukrainian and European municipalities through the bridges of partnership as an effective instrument in delivering tailored help in terms of both technical expertise and material supplies; this type of exchange at the municipal level will also facilitate Ukraine’s accession to the EU (OECD, 2022: 5).
- The design of policies and provision of aid to Ukraine should rely on a decentralised approach, with multiple engagements by Ukrainians with foreign governmental, non-governmental, and commercial partners. This can happen through facilitation of direct contacts between local communities and institutions, insurance cover for direct investment in Ukraine to protect against political risks, and liberalisation of residency rules for foreigners from friendly countries, among other measures (Umland, 2023: 9).
- A recently established multi-agency donor coordination platform should play a role in harmonising public and private donor ambitions with Ukraine’s own reconstruction plans and maximising the synergies on the ground between initiatives from different sources (Umland, 2023: 7).
- Continue supporting digital instruments in Ukraine’s reconstruction as an efficient method of ensuring transparency and accountability in reconstruction project planning and the use of funds (Azarkhina, 2023).⁹

NOTES

1. Twenty-seven units in the first administrative tier (24 oblasts (regions), the Autonomous Republic of Crimea, and Kyiv and Sevastopol as cities with special status), 490 rayons (districts) in the second tier, and 10,278 local councils in the basic tier (Vakulenko & Vermenych, 2022).

2. The voluntary amalgamation was launched by the law 'On Voluntary Amalgamation of Territorial Communities' as of 5 February 2015.
3. Along with single corporate and communal tax, and assets tax (real estate, land, transport).
4. U-LEAD with Europe: Ukraine – Local Empowerment, Accountability and Development Programme.
5. As of the end of January 2023, parts of Luhanska, Donetsk, Khersonska, Zaporizka, and Mykolajivska oblasts and all of the Crimean Peninsula were still under Russian occupation (Barros, Stepanenko, & Bergeron, 2023). In January 2023, Ukrainian Chief Commander Zaluzhnyi reported that Ukraine had liberated 40 per cent of territories occupied by Russia since 24 February 2022 (Interfax, 2023).
6. In the assessment, 'damage' is defined as direct costs of destroyed or damaged physical assets valued in monetary terms, with cost estimated based on replacing or repairing physical assets and infrastructure, considering the replacement price prevailing before the war. 'Needs' are defined as 'value associated with' the resumption of prewar normality through activities such as repair and restoration, including a premium linked to building back better principles (e.g., improved energy efficiency, modernisation efforts, and sustainability standards).
7. Some public registries were partially reopened in April 2022.
8. By President's Decree #68, 2022, <https://www.president.gov.ua/documents/682022-41405>.
9. Currently, the Digital Reconstruction Management System (DRMS) is being developed by civil society together with the government of Ukraine; the system will serve as a comprehensive online platform for managing every stage of Ukraine's reconstruction projects at central and local levels while providing real-time online information, including spending data.

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Section 2

The Legacy of War: Constructing through Reconstruction

Crime and Punishment? Financing Ukraine's Reconstruction with Russian State Assets

Brooks Newmark, with policy contribution from MEP Vlad Gheorghe

<https://doi.org/10.53121/ELFTPS5> • ISSN (print) 2791-3880 • ISSN (online) 2791-3899

ABSTRACT

While the international special tribunal is yet to be established to judge Russia's crime of aggression against Ukraine, there is a general consensus in the democratic liberal world that Russia should pay for the damage it has caused. The physical, financial, and human costs of the full-scale Russian invasion are immense for Ukraine, while their wider effects are likely to be deleterious for the whole continent. It is vital for the European Union to unite to ensure that Ukraine starts receiving reparations while the conflict is ongoing. This chapter analyses the damage and crimes Russia has inflicted on Ukraine and its citizens; the types of Russian state assets frozen by Western economies; and the international legal setting available and required to identify, freeze, seize, and distribute them to Ukraine.

ABOUT THE AUTHORS

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INTRODUCTION

The full-scale invasion of Ukraine, which began in February 2022, is a continuation of a nine-year war by Russia against Ukraine that challenges the country's territorial integrity and political sovereignty. This is unambiguously a war of overt conquest – the largest one to be fought by any European nation since the defeat of the Axis powers in the Second World War. While Europe has not always been at peace since 1945, Russia's war is greater in scope and damage than the other post-Second World War conflicts, almost in their entirety.

Unprovoked and unjustified, this act of aggression is in direct contravention of the United Nations Charter and international law. All damages to Ukrainian property, infrastructure, and citizens are direct results of this act committed by the Russian Federation and its proxies. The effect of the war on Ukraine as a functioning state is impossible to overstate. Its cities have been attacked. Its people have been killed in large numbers. Its territory has been occupied. Millions of Ukrainians, including children, have been forced to flee the country as refugees, internally displaced, or kidnapped by the Russian Federation and deported to Russia. Furthermore, the entire economy has been upended, with businesses destroyed and millions of people unemployed.

The physical, financial, and human costs of the full-scale Russian invasion are immense for Ukraine, and their wider effects – in economic, legal, and political terms – are likely to be deleterious for the whole continent. This war is thus a test for Europe and European institutions. If the invasion, destruction, and subjugation of Ukraine is allowed to stand, then Europe as a whole will be less safe and more exposed to Russia's (or others') imperial ambitions, and it will lose credibility as the global actor that it

seeks to be. The international community, and the European Union (EU) in particular, have both a moral responsibility and a pragmatic interest to ensure that Ukraine receives assistance in the course of the war as well as justice and compensation after it ends.

The post-war needs of Ukraine will be massive and urgent: it will be left with destroyed infrastructure, huge foreign debt, millions of refugees and internally displaced persons, enormous pressure on the health sector and economy, potential political instability, and immense psychological trauma on both collective and individual levels. Although all these issues are yet to be dealt with, the EU can reduce their scope and number by thinking ahead and beginning to invest in the country's reconstruction.

The estimated costs of the reconstruction of Ukraine range from the World Bank's figure of USD 349 billion to over USD 1 trillion. Many leaders have called for a Marshall Plan for Ukraine funded largely by multinational agencies, international institutions, and individual governments. But in the end, this means that ordinary taxpayers will carry the burden. At a time of recession and interest rate rises, this will be an unappealing solution for many people, notwithstanding the lip service of their leaders. But there is another solution – to at least in part reconstruct Ukraine by drawing on Russian state and individual assets seized and frozen by Western governments, primarily in the United Kingdom, the EU, and the United States.

This process would introduce multiple challenges and dilemmas, such as finding a sustainable legal framework for confiscation that can overcome the customary international law of sovereign immunities – which may, however, be lifted in certain circumstances (e.g. crimes of aggression) – while also taking into account the critical factor of political will. Yet it is vital for all of Europe to unite around the legal changes necessary to ensure that Ukraine receives reparations not after the war ends – as this could become a frozen or generational conflict of indeterminate length – but instead while the conflict is ongoing, using those Russian assets which are already to hand.

While discussing the impact and legal implications of Russia's war in Ukraine, this chapter builds on Professor Thomas Grant's New Lines Institute for Strategy and Policy Report on a Multilateral Action Model for Reparations (MAMOR). This is the first such model to be applied comprehensively to Ukraine, with greater specificity both in terms of defining assets ripe for seizure and in proposing

legal and regulatory steps for recovery and distribution of funds than all others which have been assembled or suggested. Neither the New Lines MAMOR nor this chapter is intended to be definitive, but both suggest ways and means of making the pursuit of reparations for Ukraine possible and practical. It is in this spirit that this chapter incorporates the framework of the MAMOR process.

The chapter is divided into two parts, first discussing the problem(s) and then suggesting a possible solution. The first part thus examines the state of international law on war crimes, discusses where this places Russia and its actions, and provides an overview of the massive physical and psychological damage that has been caused to Ukraine and its citizens. The second part discusses the existence of hundreds of billions of dollars of Russian state assets inside Western economies and proceeds with the existing and required international legal setting for drawing on these assets for war reparations. Finally, it concludes by pointing to the significance of early reparations for Ukraine's recovery and providing a list of concrete recommendations for EU policy-makers on how to navigate through and facilitate this process.

THE FACE OF WAR: CRIMES AND DAMAGES

Russia's war in law

Grant et al. argue in the New Lines MAMOR that Russia's invasion of Ukraine is on its face illegal. It violates the 1945 United Nations Charter, specifically Article 2(4), which stipulates that all participants in the United Nations 'shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State'. This, from first principles, rules out the invasion of sovereign territory, which makes Russia's invasion undeniably illegal.

Further to this, Grant argues that, since the foundation of the post-war world order, in practice extra attention has been given to the territorial integrity of states – especially following decolonisation. To amend or move a border by force is to attack the international system at large. This principle was reaffirmed in the Friendly Relations Declaration of 1970 (first principle), the Definition of Aggression of 1974 (Article 5), the Helsinki Final Act of 1975 (Principle III), the Vienna Convention on the Law of Treaties of 1969 (Article 62), and the Vienna Convention on Succession of States in Respect of Treaties of 1978.

In addition, Russia's attempt not only to invade Ukraine but also to declare Ukrainian territory

Russian – as in the case of Luhansk, Donetsk, Kherson, and Zaporizhzhia *oblasts*, which were declared Russian provinces after fabricated ‘referendums’ – contravenes the nature of post-1945 international policy on the inviolability of borders.

Apart from the crime of aggression and interference with a sovereign country’s territorial integrity, Russia’s war has also involved numerous individual crimes committed by agents and proxies of the Russian state acting on its behalf. These have included widespread crimes against Ukrainian civilians and soldiers, including murder, mainstreaming of sexual violence, and torture by those fighting for the Russian Federation and its allied private military companies, such as the Wagner Group. Researchers allege with much evidence that the torture chambers set up widely across Russian-occupied Ukraine were established at the direction and in accordance with the planning of the Russian state (Human Rights Watch, 2022). Russian crimes in Ukraine have also included large-scale theft of property and produce from Ukraine by the Russian state and its agents, including the widespread theft and destruction of Ukrainian grain in the growing and sowing seasons of 2022–2023, which significantly crippled Ukraine’s largest export industry. Reporting alleges that Russian forces stole or destroyed 4.04 million tons of grain and oilseeds, which have been valued at around USD 1.9 billion by Ukrainian authorities (Ha, Quinn, & Dodge, 2022).

Furthermore, both Russia’s war against Ukraine and the propaganda climate surrounding it have involved acts which violate the 1948 Genocide Convention, as argued by Diamond et al. in the New Lines Institute’s and Raoul Wallenberg Centre for Human Rights’ 2022 Independent Legal Analysis of the Russian Federation’s Breaches of the Genocide Convention in Ukraine and the Duty to Prevent (The New Lines Institute & The Raoul Wallenberg Centre for Human Rights, 2022). The war was preceded by state-sponsored Russian incitement to genocide against the Ukrainian people, including the denial of a Ukrainian identity and accusations that Ukrainian identity was synonymous with Nazism and that the existence of a Ukrainian identity was an existential threat to Russia, all of which set the stage for the commission and condoning of Russian atrocities in Ukraine. This stage-setting indicated genocidal intent within the Russian leadership and a ‘general plan’ for genocide against Ukraine.

More recent research, including by Ibrahim in *Foreign Policy* magazine, indicates that the forcible transfer of Ukrainian children to Russian-controlled

The documented damage to Ukraine’s infrastructure post-24 February 2022 is estimated to total USD 137.8 billion

areas and their deportation to Russia itself is a genocidal act, demonstrating Russia’s intention to mount a genocidal attack ‘not only on Ukrainians and Ukrainian nationhood, but the idea of Ukrainian-ness itself’ (Koshiw, 2023). This has now been supported by the recent International Criminal Court arrest warrant for Russian President Vladimir Putin and Russian Children’s Rights Commissioner Maria Lvova-Belova for war crimes, including the unlawful deportation of thousands of children from Ukraine to Russia (International Criminal Court, 2023).

All these allegations are components of a determination of genocide – whether the Russian state had the ‘intent to destroy the Ukrainian national group in part’. A determination of genocide, in line with the report, would incur duties from the parties to the Genocide Convention to prevent and punish Russian genocidal aggression against Ukraine.

The need for recovery: psychological and physical costs to Ukraine

The costs of Russia’s invasion to Ukraine are immense and may take years to resolve. In July 2022, Denys Shmyhal, Ukraine’s Prime Minister, estimated the cost of future reconstruction to be USD 750 billion and said that the process of reconstruction would take a decade (Carter, 2022). In the months since, other estimates have suggested that the figure may have topped USD 1 trillion (Martin, 2022).

Since the war is ongoing, at the time of writing it is impossible to estimate the total damage done to Ukraine’s physical infrastructure during the war, although Ukrainian institutions have kept track of the damage to the extent possible. As of December 2023, according to the National Council for the Recovery of Ukraine from the Consequences of the War by the analytical team of the Kyiv School of Economics (KSE), which is working in conjunction with Ukrainian ministries and internal bodies, the documented damage to Ukraine’s infrastructure

post-24 February 2022 is estimated to total USD 137.8 billion (at replacement cost) (Kyiv School of Economics, 2023).

Damage to housing stock is estimated to top USD 54 billion. KSE figures indicate that a total of 149,300 residential buildings, including houses and apartment blocks, have been damaged or destroyed. According to a January 2023 KSE publication (Kyiv School of Economics, 2023), this includes 131,400 private houses, 17,500 apartment buildings, and 280 dormitories. After months of intensive Russian attacks on Ukrainian infrastructure, which the KSE survey estimates to have sustained USD 35.6 billion of damages, rebuilding will be difficult. Likewise, Ukrainian industry and business assets have suffered USD 13 billion in damage (Ibid.).

Multiple municipalities have been almost wholly destroyed in the process of Russian occupation. According to the Deputy Head of the Presidential Office, Kyrylo Tymoshenko, speaking in June 2022, six cities in Donetsk and Luhansk *oblasts* have been entirely destroyed in the war (Andreikovets, 2022). Those cities are Mariupol, Volnovakha, Rubizhne, Popasna, Lyman, and Sievierodonetsk. Since then, more recent drone footage of the cities of Bakhmut and Maryinka has led analysts to conclude that they, too, have been entirely destroyed and will need complete reconstruction at war's end. Furthermore, much of the country is still occupied by Russian forces. Removing them will likely destroy many of the towns and cities which remain.

The KSE report also includes educational institutions, which are estimated to have suffered USD 8.6 billion in damages. Over 3,000 educational institutions have been damaged or destroyed in the war, including 1,400 secondary education facilities, 865 preschools, and 505 higher education institutions. In wider cultural terms, the damage has also been significant. KSE reports that '[d]amage caused to cultural, sports, and religious objects due to the war increased by another \$100 million and is estimated at \$2.2 billion' (Kyiv School of Economics, 2023). As of December 2022, there were 1,327 such facilities: 907 cultural facilities, 168 sports facilities, 157 tourism facilities, and 95 religious facilities' (Andreikovets, 2022).

In human capital terms, Ukraine has suffered immensely. Formal casualty figures for both soldiers and civilians are difficult to verify, but the United Nations estimates that 8,000 civilians at a minimum have been confirmed killed, and well over 13,300 have been injured (United Nations, 2023). This is likely a vast underestimate, as the bodies of many

Ukrainian civilians who have been killed in the war have been lost, and thus their deaths cannot be verified. The real figure is more likely to be in the tens of thousands.

Ukraine has also suffered tens of thousands of military casualties. Estimates vary, including the 100,000 suggested by the chairman of the United States Joint Chiefs of Staff, Mark Milley (Cooper, Schmitt, & Gibbons-Neff, 2023). These are disproportionately people of working age. Their loss will be felt in rebuilding the country even after Ukraine's victory. Millions of Ukrainians – most of them women and children – are living abroad as refugees. Their return to Ukraine is a sensitive question that is yet to be addressed (see the chapter on this topic), as it involves a wide range of considerations, from legal to moral, and will entail substantial public spending.

The study of trauma in wartime is not new, but its conclusions at the level of a whole society are somewhat tentative. It is nonetheless evident that Russia's war on Ukraine has not only imperilled a nation and made its inhabitants suffer; it has also traumatised that nation. The destruction of Ukrainian cities and Ukraine's peaceful way of life is a great trauma for millions, as is losing loved ones, having to leave home because of war, and facing the vicissitudes of life as a refugee abroad. Initiatives to reconstitute Ukraine and Ukraine's civil society both during and after the war must thus focus on transitional justice and the rebuilding of Ukrainians' mental health.

The damage to Ukraine is great in human and financial terms, but it is also significant in more practical terms. Much of the country has been rendered unliveable through the destruction of infrastructure as well as residential and business areas, or due to the presence of mines and unexploded ordnance. For Ukraine to be a nation capable of sustaining its own economy and participating in the international system, its towns and cities and its institutions must be rebuilt. If hardship in the longer term is to be avoided for Ukrainians, Ukraine's economy must be reconstructed.

RUSSIA MUST PAY: RESTORING JUSTICE

While the special international tribunal is yet to be established to judge and condemn Russia's crimes against and in Ukraine, there is a general consensus in the democratic liberal world that Russia, as the responsible actor, should pay for the damage it has caused. Overall, Russia's war on Ukraine is illegal by definition (Howard, 2022). Having breached

international law, Russia bears full responsibility for the massive destruction in Ukraine that has been perpetrated in the course of its unjustified and unprovoked act of aggression. Furthermore, according to international precedent, '[w]here a state has international responsibility, consequent upon its responsibility is a general obligation to make full reparations for the injury caused by its internationally wrongful act' (Grant et al., p. 6).

Therefore, the legal test is met for collecting and giving to Ukraine reparations from Russia to compensate for this crime of aggression. According to the second 'draft conclusion' of Grant et al., 'Ukraine as a State and Ukrainian citizens as individuals are entitled under international law to reparations for injuries resulting from Russia's aggression' (Grant et al., p. 13). The amount and type of reparations must be determined by the nature of the crimes committed by Russian forces and their allies acting under Russian orders against Ukraine. The genocidal component of Russia's war on Ukraine is an accentuating factor in the question of reparations. If Russia is judged to have waged a war of genocide, which this chapter argues it is doing, the necessity and scope of reparations must expand, and the urgency with which reparations are collected and disbursed to Ukraine must likewise increase.

Available funds to finance the reconstruction of Ukraine: state assets and their types

Initially, it might seem difficult to collect and disburse reparations while a war is ongoing. Russian state assets are largely held within the territory of the Russian state. They cannot be requisitioned or sold while they are under Russian state control. The Russian economy has also become increasingly a war economy – defensive in design and practice, willing to repurpose foreign owned assets, and implementing strict regimes of capital controls to prevent foreign transfers or capital flight.

Nonetheless, many Russian state assets are in Western state hands. The European Commission has claimed that EUR 300 billion of sanctioned Russian central bank assets have been blocked, and EUR 19 billion of sanctioned Russian oligarch assets have been frozen. The President of the European Commission, Ursula von der Leyen, has indicated that this money will be allocated to assist the reconstruction of Ukraine (European Commission, 2022). Across the democratic world, sanctioned Russian assets are within the compass of Western financial institutions, frozen and seized by the sanctions

The genocidal component of Russia's war on Ukraine is an accentuating factor in the question of reparations

initially levied against Russia in 2014, intensified before the invasion in February 2022, and subsequently levied afterwards.

While garnishing state assets is challenging, it is not impossible. One target could be, for example, Russian state-owned monopolies, particularly those producing commodities, such as Rosneft and Gazprom. Grant et al. argue that the revenues of these firms, namely, 'Gazprom, Rosneft, and Rosatom, are potentially subject to forfeiture' (Grant et al., p. 8). Citing precedent, including the reparations paid by Iraq to Kuwait following the 1990–1991 Gulf War, the MAMOR indicates that Russian state monopolies could have their profits garnished to provide funds for a Ukrainian compensation commission, which would disburse capital to the Ukrainian state and individual Ukrainian firms and people in order to aid reconstruction.

Another category of possible assets exists because Russia is not a conventional economy but is instead a kleptocracy: many of the funds and resources theoretically in private hands are in fact either looted state assets or assets held at the permission of the President of the Russian Federation, Vladimir Putin. Because these assets are in effect quasi state assets, they ought to be considered as potential assets to be collected for war reparations and as possible targets of Western sanctions aimed at Russian state entities. These can be found in the annex to the MAMOR report.

Possible state assets of this type include those held by oligarchs, whose assets 'can be removed from them at any time and are subject to regular government instruction as to how they are to operate, [and] cannot be deemed in any real sense "private" assets'. They also include tax fraudsters, 'connected to the Kremlin, who are using their authority and connections to plunder the state'; and those 'looting contractors' (Grant et al.: 35–38) who have been able to skim capital off state budgets and redirect it

into private hands. As both stolen assets and state assets, they are ripe for seizure.

Yet another class of state assets is those of state employees whose wealth seems 'improbable': 'public officials with apartments in, for example, Manhattan and Mayfair, huge holdings in investment trusts and U.S. Treasuries, and significant commercial property holdings around Wall Street and the city of London – which are not compatible with their formal salaries' (Grant et al.). Because these assets, the report conjectures, have been purchased with state capital appropriated by these individuals, the capital contained is in fact a state asset no matter who holds it; thus, it is apt for seizure.

Other possible holders of state assets are those referred to as 'wallets', 'people specifically used to protect Putin and his inner core of supporters from political exposure and Western sanctions and legal systems', for whom 'a number of mechanisms have been developed to protect assets and disguise ownership. One of which is a wallet system in which regime loyalists hold assets on behalf of the Kremlin leadership' (Grant et al.: 35–38). These can be considered state assets to the extent that 'these assets do not belong to their owners, and they are holding these assets for regime leaders' (Grant et al.: 36–38) and thus are legitimate targets for sanctions and seizure regimes.

The process of reparations: Kuwait precedent and legal requirements

Grant et al. argue that reparations from Russia for Ukraine must be processed on grounds analogous to the reparations collected for Kuwait after the Gulf War in 1991. Despite the fact that the leadership of Iraq never admitted culpability for the country's aggression against Kuwait, they never stood trial, and Iraq was not occupied by the victorious coalition, Iraq was still found liable to pay Kuwait reparations and was compelled to do so through an international legal process.

In Kuwait's case the UN Security Council created a 'Kuwait Compensation Fund', which was set up alongside a Compensation Commission (UNCC) also under the UN banner. The UNCC worked over the following 30 years to collect, and to permit the Compensation Fund to pay out, over USD 52 billion in compensation to 1.5 million claimants – the state of Kuwait alongside Kuwaiti individuals and entities. The Compensation Fund drew income to pay claimants not from money volunteered by Iraq, but instead from garnishing the revenues of the Iraqi oil industry.

International support for Ukraine as the victim of unprovoked aggression is significant

In much the same way, the New Lines MAMOR envisions 'the creation of a fund and Compensation Commission modelled on that of the UNCC'. There are problems with copying the UNCC model exactly: it was established through UN processes, including votes at the UN General Assembly and the Security Council, where Iraq – not being a Security Council member – did not have a veto. Russia is a permanent member of the Security Council, so it has a veto against any proceeding of this kind.

As such, the New Lines MAMOR argues instead that the fund and commission for Ukraine should be 'created by an international treaty or similar instrument concluded by willing states. Such an instrument could be concluded and presented to the U.N. General Assembly for possible adoption as a General Assembly resolution and then opened for signature, or concluded in a free-standing diplomatic conference.' Despite not being introduced in an identical way to the UNCC relating to the invasion of Kuwait, 'It would set up the fund and Compensation Commission modelled principally on the structures and processes of the UNCC'.

An international treaty would be complicated to construct and to sign. But international support for Ukraine as the victim of unprovoked aggression is significant. Motions in the UN General Assembly in support of Ukraine attract widespread votes in favour. Only a few countries, closely aligned with Russia and Iran, tend to vote against these motions. And few countries again, including China and India, tend to abstain. Among the states that commonly vote in favour of Ukraine at the UN are those that hold the majority of global GDP.

Such a bloc, if it were able to establish a legal regime in favour of collecting and distributing seized Russian assets, would likely be able to secure and distribute funds far greater, even adjusted for inflation, than both the UN Compensation Commission for Kuwait and the post-Second World War Marshall Plan.

Once such an agreement was reached and passed by the UN General Assembly, states that supported Ukraine receiving reparations from Russia could 'commit to seize Russian assets within their jurisdiction, in accordance with their national and constitutional requirements, and place them into the fund, for subsequent distribution by the Compensation Commission' (Grant et al.:).¹

This is another legal requirement for the creation of any new international treaty regime. 'It will be necessary to identify what counts as genuinely private assets and what counts as assets only available to the ultimate private holder of the assets due to their connection with the Russian system of power in order to assure due process rights of all asset-holders' (Grant et al.: 9). Thus, in the draft conclusions of the New Lines MAMOR, Grant et al. argue that '[e]very State accepting these Draft Conclusions shall recognize and give effect in its national law to the authority of the Compensation Fund to distribute compensation to claimants in accordance with the awards that the Compensation Commission adopts, and shall accept such awards as final, enforceable, and without challenge or appeal'. This can be accomplished with changes to national law.

On the EU level, the respective initiative has been proposed as part of the European Parliament Opinion on the proposal for a directive of the European Parliament and of the Council on Asset Recovery and Confiscation stating that '[c]ompensation to the Ukrainian victim population can be provided through a dedicated mechanism for the compensation of Ukrainian victims implemented under the Eastern Neighbourhood line (14 02 01 11) and aiming at the improvement of the living conditions of the victims. It could be based on a Ukrainian victims' claims registry and dedicated claims commission' (European Parliament, 2023).

Finally, the Compensation Commission could assume Russia's liability, as Russia is the aggressor in this war. In doing so, the commission could usefully spend its time functioning as a restitution forum, assessing claims and disbursing funds. Once this had been arranged, the commission could 'establish for each claimant whether Russia's aggression has caused financially assessable damage and, where it establishes that Russia's aggression has caused such damage, the amount of compensation', following which the Compensation Fund 'shall distribute compensation to claimants in accordance with the awards that the Compensation Commission adopts'.

CONCLUSIONS AND RECOMMENDATIONS

Russia's war has done dreadful damage to Ukraine, its people, its infrastructure, and its economy. The costs of this war will only grow, and they will be immense. It is justified and, following the framework advocated by Grant et al., may be possible to compel Russia to pay reparations for this conflict. Those reparations, combined with reform in Ukraine's government and private sectors, could rebuild Ukraine in a new and positive direction.

Receiving a portion of reparations while the war is ongoing would change the picture dramatically for Ukraine. A state which at the moment is reliant on international loans and aid would be able to rely upon the provision of capital to governments and individuals as compensation and reparation for Russian aggression. Rather than 'entirely depend[ing] on financial assistance from Western countries and international institutions, both during wartime and for many [years] following the end of the war' as Ukraine is now (Matuszak, 2022), Ukraine's government could begin the process of rebuilding the country. This can be seen in two parts: the rebuilding of Ukraine physically, and the physical and mental rehabilitation of individuals following the devastating impact of the trauma brought by Russia's war.

Reparations gathered from Russian state entities cannot instantaneously aid Ukraine's mental health recovery. But these funds, if used effectively in reconstruction, can make a significant impact. Those cities from which people have been driven can be rebuilt, and they can be rebuilt in ways which will improve the mental health of their former and future residents. A revived Ukrainian healthcare system can use reparations to fund mental health services based on the needs of the population. All the destroyed cultural, religious, and educational objects and facilities will need to be rebuilt if Ukraine is to reassert its cultural rights in defiance of Russia's invasion, alongside maintaining social stability and providing for the basic needs of the population. These will be vital in the sustainment and continuation of Ukrainian identity after the war, and Russian reparations ought to cover them.

Further in the future, if the country's physical and psychological wounds begin to be addressed as a result of the capital infusions of Russian reparations, a new Ukraine can be built that has been strengthened by the war rather than destroyed by it, and it can be afforded the justice and reparations it deserves under international law.

Combined with the country's course towards accession to the EU, and possibly with either NATO membership or comparable security guarantees, Ukraine could emerge from the conflict able to rebuild, to reform, and to thrive. Just as its people have shown their resilience and determination to adapt and improve in the light of threats of violence, Ukrainian civil society could respond to the challenges of reform and reconstruction with similar energy and inventiveness.

Since its independence from the USSR in 1991 Ukraine has been bedevilled by persistent ghosts within its state infrastructure. Since 2014, and especially since Russia's full-scale invasion in 2022, Ukraine has demonstrated extraordinary energy for reform. If the war against Russia's aggression is won, and Ukraine continues the anti-corruption and internationalist reforms the Zelenskyy government has begun to enact in the course of the war, Ukraine's economy and society may not only recover from the damage of the war but also emerge stronger and more resilient.

It is incumbent on Ukraine's allies and friends to provide the goodwill and the capital to allow this transformation to occur, as it is essential for the future of the continent as a whole. This must begin with finding novel legal routes to provide Ukraine with the reparations it deserves in response to Russia's war of aggression – as soon as possible.

The EU itself and European policy-makers have many avenues available to begin this process. To ensure that the framework for confiscating and repurposing Russian assets for Ukraine's benefit becomes a practical and tangible process rather than speculative, the following steps can serve as a potential roadmap:

- 1.** Develop a comprehensive map of Russian assets, both state and private, which have been frozen and seized within EU economies.
- 2.** Adopt comprehensive legislative proposals and establish dedicated bodies for the collection of sanctioned funds. Moreover, national legal systems need to provide measures for confiscation based on the fact that the assets are linked to Russia's aggression against Ukraine.
- 3.** Strengthen the effectiveness of the EU sanctions policy. The sanctions policy introduced by the EU does not sufficiently damage Russia's ability to conduct its war against Ukraine. Thus, sanctions implementation should be improved (Central Government, 2023).
- 4.** Ensure more institutional control at the EU level over sanctions derogation. The European Union

needs to establish a dedicated sanctions body similar to the Office of Foreign Assets Control in the United States. This body would be responsible for overseeing the implementation of sanctions and assessing their effectiveness as well as providing assistance to Member States, maintaining information on derogations, and referring cases of evasion to the European Public Prosecutor's Office (EPPO).

5. Extend the mandate of the EPPO to investigate sanctions evasion as a crime against the EU's financial interest.

6. Allocate the confiscated assets within the common EU budgetary instrument. Prior to establishing a Rebuild Ukraine Fund or similar instrument, the funds should be directed towards the Neighbourhood, Development and International Cooperation Instrument.

7. Maintain contact with Ukrainian authorities in defining the scope of damages and reconstruction needs, including providing assistance in registering damages, as it is crucial to collect evidence before it is destroyed due to the ongoing war. This assistance should consider the scope and size of reparations based on individuals' claims to ensure that they are adequately compensated for their losses.

8. Ensure the effective distribution of funds by directing them towards reconstruction projects with concrete deliverables and claims submitted to a compensation commission. The EU's budgetary oversight should be implemented to mitigate the risk of corruption and guarantee transparent and accountable financial management.

9. Provide assistance to EU Member States in strengthening their systems for sanctions implementation and asset confiscation so that Member States see it not as a burden but as a necessary and rightful duty. By supporting Member States, the EU can strengthen its ability to hold accountable those who violate international law and to support its strategic interests.

Finally, after these stages, European policy-makers can work to ensure that the gears turn smoothly, that Russian state assets are collected and processed justly, and that the framework that is created is both legal and functioning, in order to ensure that the mechanism works as intended. If this is not done, the costs of rebuilding Ukraine will have to be borne not by the aggressor, but by others. It is vital for European leaders to appreciate the moral necessity, and the national and continental interests, of putting this plan into action as rapidly and effectively as possible.

NOTE

This chapter is based on Professor Thomas Grant's New Lines Institute for Strategy and Policy Report on a Multilateral Action Model for Reparations and policy input by MEP Vlad Gheorghe (Renew Europe Group).

1. These funds could come from placing tariffs on Russian state exports and industries, including the nationalised hydrocarbons industries, or through state funds which have been looted and exported by Russian oligarchs and other political figures. Grant et al. argue that national laws may face new challenges in the seizure of nominally private assets which are in fact derived from state funds stolen and cycled through Russia's kleptocracy.

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Ecological Consequences of Russia's Full-Scale Invasion of Ukraine: Accountability, Compensation, and Sustainable Recovery

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<https://doi.org/10.53121/ELFTPS5> • ISSN (print) 2791-3880 • ISSN (online) 2791-3899

ABSTRACT

Russia's invasion of Ukraine has affected not only the country's citizens and infrastructure but also the environment. This chapter focuses on the environmental costs of the war and possible legal means to address them. Firstly, environmental crimes are often dangerous to monitor and report on, while there is currently no legal mechanism that assures accountability and compensation for them. The war in Ukraine brings momentum for such a mechanism to be developed at the international level. Secondly, the issue of compensating Ukraine for the massive damage is difficult to ensure and requires pressure from the international community. This chapter explores options, including seizing frozen Russian assets and using them for Ukraine's reconstruction. Thirdly, the chapter explores Ukraine's sustainable recovery prospects and priorities that have been brought to the table by various experts on both the national and international level. The analysis ends with a list of recommendations for EU policy-makers.

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INTRODUCTION

Since February 2022, the Russian invasion of Ukraine has caused widespread destruction, ranging from immense human losses and damaged lives to demolished critical infrastructure and fully destroyed cities. One cost which, due to its complexity, remains hard to measure and showcase fully is the environmental one. It is difficult to evaluate because its effects stem not only from the constant military action on Ukrainian territory but also all the inaction, the effects of damaged energy infrastructure, the takeover of nuclear power plants, attacks on thermal power plants, the burning of agricultural land, the shelling of forests and national parks, the flooding of mines, the polluting of air and water resources, and the consequences for the fauna and flora, as well as for the biodiversity of the whole country. 'The Russian war has destroyed 5 million acres of forests in Ukraine in less than six months', said Volodymyr Zelenskyy during his speech in Sharm El-Sheikh at the COP27 Summit. The deliberate targeting of industry, civilian buildings, and environmental sites leads to pollution and water disruption, which in turn affects overall public health. For example, the explosion of bombs over farm fields has the potential to increase the amount of heavy metals entering the food chain and therefore cancer rates (Stein & Birnbaum, 2023).

Furthermore, Ukraine is home to 35 per cent of Europe's biodiversity and possesses one out of three species under protection in Europe, which exist only in Ukraine's steppes (WWF, n.d.). In some

of these territories, military actions are currently being taken that might prove fatal for these species (Hoffner, 2023). Furthermore, birds that usually migrate from Central Europe to Africa in summer, with a key stop in Ukraine, have been affected and may not have proceeded with their usual route. Unfortunately, '[m]onitoring endangered species and protected habitats has become all but impossible in most cases due to the ongoing combat and risk of landmines' (Letman, 2023).

The long-term consequences of the war for Ukraine and Europe will be immense, particularly if measures for recovery are not applied. To address this issue, this chapter first provides background information on the environmental damage caused by the Russian invasion of Ukraine and how that information is collected, monitored, and depicted. Second, it analyses the possibility of obtaining legal accountability and reparations, particularly in the area of environmental crimes and 'ecocide'. Third, the chapter presents an overview of Ukrainian sustainability programmes and projects that are being discussed, with a focus on European Union (EU)–Ukraine relations. Finally, policy recommendations are provided regarding data monitoring and validation processes, legal accountability, and reparations, as well as support for the sustainable recovery of Ukraine.

ENVIRONMENTAL COSTS OF THE RUSSIAN INVASION OF UKRAINE: DATA COLLECTION

Greenpeace (n.d.), together with EcoAction, a local non-governmental organisation (NGO), has developed a map to envision the environmental destruction of Ukraine since the beginning of Russia's full-scale invasion. It is continually updated and shows the effects on water, soil, and air from the continuous shelling of Ukrainian territory.

However, the war on nature did not start in February 2022 but has been ongoing in the eastern territories of Ukraine since 2014 (Hoffner, 2023). Those territories, which are heavily industrialised, have experienced considerable negative effects on the environment and consequently on the health of people living in the area (OSCE, 2017). In fact, the Donbas region has around 4,500 mining, chemical, and metallurgical enterprises – 80 per cent of which have hazardous installations that pose a huge threat to the environment (Green European Journal, 2022). Water that was not pumped out of abandoned coal mines has reached the groundwater and polluted drinking water in the region (Truth Hounds, 2021). Consequently, there is a risk of pollution of the

Siverskyi Donets river, which, through 'transboundary pollution', could reach the Sea of Azov and the Black Sea, which would have consequences beyond Ukraine (Green European Journal, 2022).

Despite there already being quite a lot of data available thanks to the collective efforts of diverse actors, it remains hard to monitor, document, and validate the environmental consequences of the war in Ukraine as required for legal accountability (to be discussed below).

While there are no international standards when it comes to recording data regarding environmental crimes, a methodology has been being developed in Ukraine since February 2022. In cooperation with international organisations (the United Nations Environment Programme and the Organization for Security and Co-operation in Europe, among others) as well as local civil society NGOs (such as EcoAction and Environment People Law), the Ukrainian government has created several platforms and initiatives to collect, process, and depict data publicly. Some examples include SaveEcoBot, which allows anyone to record an environmental crime, and Ecodozor, which depicts this data. Ukrainian and international governments also rely on many organisations to process, analyse, and document the data that is being gathered. One such organisation is the Ukraine War Environmental Consequences (UWEC) Work Group, a partnership of biologists, environmental activists, analysts, and journalists from Ukraine, Russia, Belarus, and the United States.

Even with all the initiatives and projects that are ongoing, there still may not be enough data, due to the diversity of actors involved, if one needs to use it for the legal accountability and compensation processes. Data which is collected would have to be independently verified and matched against baselines, meaning data from before the full-scale invasion, which might be hard to access or unavailable. Here some technical support from the equipment, research, and expertise side might be required from beyond Ukraine, to ensure that collected and processed data satisfies legal accountability and compensation requirements.

ENVIRONMENTAL CONSEQUENCES BEYOND THE TERRITORY OF UKRAINE

The environmental crimes committed in Ukraine will have an impact far beyond the territory of Ukraine, as the environmental and ecological consequences mentioned above are felt not only in Ukraine but also in Belarus, Moldova, Russia, and the majority

of Eastern Europe (Green European Journal, 2022). Some areas of Ukraine will remain 'no-go' zones which are unfit for human habitation (Letman, 2023). Therefore, the environmental consequences are already a problem that not only Ukraine but the whole European and global community must tackle to secure our common future. The consequences of these actions will remain for many generations to come, long after the war in Ukraine is over.

Besides the direct environmental consequences of the war, there are also some indirect ones that affect the whole world. These range from the global energy crisis to food insecurity in many parts of the world that depend on exports from Belarus, Russia, and Ukraine. Russia and Ukraine together accounted for considerable shares of global exports of wheat (33 per cent), barley (27 per cent), maize (17 per cent), sunflower seeds (24 per cent), and sunflower oil (73 per cent) (UWEC Work Group, 2022). Russia is also a leading exporter of fertiliser (Global Network Against Food Crises & Food Security Information Network, 2022).

Since the full-scale invasion, across Ukraine, agricultural lands have been damaged by military activities. This includes Ukraine's richest soils, which has serious implications for regional and global food security, since Ukraine possesses around 25 per cent of the earth's chernozem, a rich, fertile type of soil (SIPRI, 2023). As a result of reduced exports due to international sanctions in the Russian case, and the inability to produce and transport goods at the same volume through a secure corridor from Ukraine, the price of food risen by 8–22 per cent in different parts of the world (Rose, Chen, & Wei, 2023). Countries such as Ethiopia, Nigeria, Sudan, and Yemen, where many people were already living below the poverty rate before the invasion, are now facing an even worse food crisis (UWEC Work Group, 2022).

In fact, Russia does not hesitate to use food as a weapon. Russia has been continuously blocking and violating the so-called grain corridors that provide secure logistical transportation of Ukrainian grain for export. This has consequences for the global community that relies on Ukrainian grain but also for the Ukrainian economy, which is heavily dependent on trade and has seen a reduction in GDP of over USD 858 million (New Food Magazine, 2023). Globally, disruptions to grain exports cost the world's economy more than USD 1.6 billion during 2022 alone (New Food Magazine, 2023). Yet Russia steals Ukrainian crops from temporarily occupied territories and uses them to artificially expand its

Some areas of Ukraine will remain 'no-go' zones which are unfit for human habitation

influence in the Middle East, Africa, and Asia (BBC News, 2022). Consequently, it is no surprise that in 2022 Russia had a record grain yield (EU Science Hub, 2022).

Another environmental consequence of the war is the continuous risk of radiation leakage from temporarily occupied nuclear power plants. On 4 March 2022, Russian forces shelled Zaporizhzhia Nuclear Power Plant, causing damage to a transformer and a fire in a training building, before seizing it (Acton, 2023). There were several moments when Russia's actions could have led to a catastrophe on the scale of the Fukushima disaster. Rosatom, Russia's state-owned nuclear power conglomerate, has been instrumental in the Russian takeover of Zaporizhzhia Nuclear Power Plant. In consequence, Ukraine has been calling for sanctions on key Russian businesses. These have not yet been imposed, however, since Europe, having mostly phased out the use of Russian fossil fuels, increasingly depends on Russian nuclear exports, predominantly produced by Rosatom (Acton, 2023).

These are only a few examples of the environmental crimes that are already affecting not only Ukraine but also the global community. Legal accountability and compensation might be required to countries beyond Ukraine, especially those who have been indirect victims of the invasion.

ACCOUNTABILITY FOR ENVIRONMENTAL CRIMES: LEGAL ASPECTS

In March 2023, the International Criminal Court (ICC) issued an arrest warrant for Vladimir Putin for his war crimes in relation to the forced deportation of children from Ukraine to Russia, where many have been adopted by Russian families (Beaumont, 2023). Those are by no means the only war crimes that are being committed on Ukrainian territory by the Russian government and Russian forces, for which Ukrainians will seek justice. Among them are environmental crimes, which are among the most complicated ones to report and validate, and whose

affects are difficult to prove. Up to now, there has been one successful such case in history, after the 1991 Gulf War, when the United Nations Security Council (UNSC) set up a Compensation Commission for Kuwait, after which Iraq had to pay reparations for damages, including environmental damages (CBC News, 2023). This would be more difficult in the case of Ukraine, however, considering Russia's role in the UNSC. Therefore, alternative approaches should be explored.

Recent developments have shown some progress when it comes to accountability for environmental crimes during war, and the Ukrainian case has surely provided momentum considering all the data shared above. Timing and publicity around environmental crimes in Ukraine will help the country to reach justice and accountability on the matter.

For example, towards the end of 2022, the UN General Assembly adopted 27 legal principles intended to enhance the protection of the environment throughout the cycle of armed conflicts (CEOBS, 2022b) as well as a legal definition of ecocide that provides an opportunity to enforce legal accountability for environmental damages during conflicts. While ecocide is not yet fully recognised by international law, ecocide legislation has already been passed in Ukraine, where it is defined by Article 441 of the criminal code as the 'mass destruction of flora and fauna, poisoning of air or water resources, and also any other actions that may cause an environmental disaster' (CEOBS, 2022a). During the G20 Summit, Zelenskyy mentioned that recognition of ecocide and environmental protection are among ten proposals contained within Ukraine's formula for peace (Watts, 2023).

Another tool that could be applied is the Rome Statute, particularly Article 8, which says that 'intentionally launching an attack in the knowledge that such attack will cause widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated' is a war crime (Institute for War and Peace Reporting, 2023). But for this tool to be applied, all the gathered data must be processed and validated, which is not an easy task while military actions are ongoing. It is also a technically and bureaucratically laborious process that requires time, effort, support, and coordination with different datasets. However, it is a process on which Ukrainians, with the support of various partners, are already working, and they

are hoping to see results in the near future (Institute for War and Peace Reporting, 2023).

All these mechanisms give hope not only for Ukraine but also for the global community that has been fighting for so long to prevent environmental crimes, have ecocide recognised in international law, and protect nature in times of armed conflict. In late March 2023, the European Parliament adopted a Position on the protection of the environment through criminal law, including a definition of ecocide (Euractiv, 2023). Considering that EU Member States represent 40 per cent of the states within the ICC, registering ecocide in their domestic legislation will have global effects and help the Ukrainian case. In addition to recognising ecocide in EU law, to back the proposal, sanctions were also listed ranging from fines to imprisonment.

In addition to the legal accountability of those directly involved in environmental crimes in Ukraine, the question of compensation is also a topic of discussion, even if currently one seems to be far from it. Ruslan Strilets, Head of Ukraine's National Environmental Ministry, is confident that 'the day will come when Russia will pay for all its crimes ... including crimes against the environment' (Time, 2022). As of February 2023, the total number of cases of environmental damage amounted to 2,300 and were estimated at a cost of over USD 51 billion (Politico, 2023).

While the question of reparations is a difficult one and no one can predict how and if Russia will ever pay them to Ukraine, there are some developments in the area of Russian confiscated assets, which might be used for the reconstruction of Ukraine. The United States, the EU, and other partners have frozen Russian funds amounting to approximately USD 300–500 billion (EPRS, 2022). However, frozen assets are legally different from confiscated ones, and a decision on this would need to be made by the UNSC. Nevertheless, a number of creative options are on the table for how to use frozen Russian assets to support compensation for Ukraine (EPRS, 2022). For example, Canada was the first country in the world to legislate the possibility of seizing sanctioned Russian assets for use in Ukraine's reconstruction (European Pravda, 2022). When it comes to the EU, the European Parliament a year ago already called for the funds to rebuild Ukraine to include 'Russian assets which were previously frozen as a result of sanctions and should be legally confiscated in accordance with international law', so now the Member States and other EU institutions must follow suit (European Parliament, 2022).

POST-WAR RECOVERY: A NEW TWIST IN THE EU AND UKRAINE'S JOINT GREEN TRANSITION

Simultaneously with working on documenting environmental crimes to secure legal accountability and compensation, Ukraine and its partners have already started their work on the recovery plan for Ukraine. In view of global green aspirations, the recovery of Ukraine is also discussed within the framework of a sustainable, or green, recovery. This is also a priority for the Ukrainian government, as committing to the global sustainability agenda gives Ukraine more chances to receive diverse and sustainable support from international donors and investors.

After the first six months of the war, an estimated 131,000 residential buildings and 25,000 kilometres of road had been damaged or fully destroyed (Politico, 2022). While destruction brings an opportunity to rebuild the outdated Soviet-era infrastructure and introduce more sustainable, forward-looking projects, some difficult decisions will need to be taken when rebuilding the country. Firstly, around 30 per cent of Ukrainian territory has been mined or bombed, which is a direct threat to the recovery of the Ukrainian agricultural sector (Kyiv Independent, 2022b). Secondly, the cost for such rebuilding will be astronomical (according to the latest data from March 2023, around USD 411 billion) but might also bring benefits in the future, including for the EU, which is already committing to provide investment (Al Jazeera, 2023; Politico, 2022). In July 2022, during the Ukraine Recovery Conference in Lugano, Switzerland, European Commission President Ursula von der Leyen referred in her speech to 'the dream of a new Ukraine, not only free, democratic and European, but also green and prosperous' (European Commission, 2022b).

Following the Ukraine Recovery Conference, a Declaration was issued outlining seven core principles for Ukraine's reconstruction, one of which was sustainability, in line with the Paris Agreement and the 2030 Sustainable Development Agenda. In Lugano, the Ukrainian government had presented its ten-year plan, divided into two phases, which envisions 850 diverse projects requiring around USD 750 billion for their implementation. Sustainable energy development and energy independence issues were also included among 21 projects and activities, requiring USD 130 billion (Skidmore, Wessel, & Asdourian, 2022).

A Ukrainian draft Recovery Plan, within its energy security chapter, focuses on decarbonisation,

The Ukrainian population supports the idea of developing renewable sources of energy

energy efficiency, and modernisation with a focus on public buildings, which indeed proves to be one of the most effective ways to reach the desired goal (National Council for the Recovery of Ukraine from the Consequences of the War, 2022). This vector is also supported by substantial funds, mainly the Eastern Europe Energy Efficiency and Environment Partnership, or E5P, a fund whose various donors include the EU institutions and Member States and that is designed to support Ukraine's development of energy efficiency (UNDP, 2022). The sustainable and modern reconstruction of Ukraine in this matter will also be a helpful asset when it comes to the country's future EU membership status.

European Commission President von der Leyen and German Chancellor Olaf Scholz have both called for a 'Marshall Plan' for Ukraine following the principles of the EU's Green Deal. This should still be elaborated upon, yet the EU has already taken concrete steps to support Ukraine in its green recovery as well as to engage in more strategic long-term partnerships since a sustainable future for Europe is a priority for them both. Among the concrete steps already taken by the EU to support Ukraine's green recovery was Ukraine's accession to the EU's LIFE programme for the environment and climate. Ukraine became the first non-EU country to join the programme, securing at the same time LIFE's support for environmental restoration of all kinds, including reducing pollution, restoring ecosystems, and addressing long-term environmental consequences (European Commission, 2022a).

Yet the recovery phase might also be environmentally hazardous for Ukraine. In order to rebuild the country, huge amounts of sand, granite, and other natural materials will be required (Hoffner, 2023). Therefore, certain control mechanisms and accountability have to be applied to ensure that extraction does not contradict other goals of the 'green recovery' plan and does not affect Ukraine's environmental, biodiversity, ecological, and climate

commitments, such as the State Strategy on Forest Governance in Ukraine until 2035.

Before the full-scale invasion, Ukraine was one of the world's most energy-intensive economies. However, the country had set a target of reaching a share of 12 per cent renewable energy usage by 2025 (SIPRI, 2023). This will be harder to achieve now since Russia has destroyed 90 per cent of wind power and 50 per cent of solar power facilities in Ukraine, which were mostly concentrated in temporarily occupied or destroyed areas. Nevertheless, this area should and will become one of the priorities for Ukraine's sustainable recovery plan, assuming that rebuilding and reconstruction will be a very energy-heavy, polluting, and emissions-intensive process. Furthermore, Ukraine needs to develop a more energy-efficient, secure, and independent market, which is also one of the requirements for joining the EU (Deputy Prime Minister's Office for European and Euro-Atlantic Integration of Ukraine, 2020). The Ukrainian population supports the idea of developing renewable sources of energy (78 per cent according to a sociological survey) (Heinrich-Böll-Stiftung, 2023). At the same time, 87 per cent of EU citizens want more investments in renewable energy. Thus, renewable energy is yet another field in which Ukraine can become a reliable partner for the EU in both aspirations and concrete steps towards decarbonisation and more energy security.

CONCLUSION: UKRAINE'S RECONSTRUCTION FROM A LONG-TERM PERSPECTIVE

The consequences of Russia's environmental crimes in Ukraine are enormous and have already affected the lives of people and all other living creatures. Considering transboundary environmental connections, these consequences extend far beyond Ukraine's borders and even beyond Eastern Europe. Some indirect consequences that have already been felt globally range from rising food and energy prices to grave food, energy, and even nuclear threat crises. For this, the Ukrainian government and civil society, with the support of diverse international, governmental, and non-governmental actors, are and will be seeking justice and compensation. This will serve as an important test case for legal accountability and reparations for environmental crimes. While it remains to be seen what existing or new mechanism will be used in international law, a few options have been discussed that also bring momentum globally to legalise environmental crimes and ecocide in domestic and consequently international legislation.

Enormous financial investments, loans, and funds from the international community will be required to rebuild Ukraine

Finally, while it might seem as if not all sectors need to consider the sustainability component, the war in Ukraine has once again highlighted the close intertwining of food, environment, energy, public health, economics, and peace, which forces one to look at the notion of security from different angles rather than considering the military perspective alone.

In addition to possible reparations, enormous financial investments, loans, and funds from the international community will be required to rebuild Ukraine. For these funds to be used in a truly mutually beneficial and sustainable manner, the long-term implications of the reconstruction process must be taken into consideration from the very beginning. It would be wise to explore what is needed to ensure that buildings, roads, infrastructure, and environmental sites are rebuilt in a way that can serve Ukraine and Europe for many decades. The environmental and climate components thus need to be included in all relevant documents. For this reason, while the final vision for Ukraine's recovery project is still a work in progress, the post-war restoration projects and goals should go hand in hand with developing both a short- and a long-term vision for Ukraine's development and growth. Currently existing strategies and ideas remain to be ambitious and more vocal rather than realistic action plans agreed among all stakeholders involved.

POLICY RECOMMENDATIONS

- 1.** Provide technical and expert assistance to Ukraine on monitoring, documenting, and validating data on environmental crimes. This will require expertise from environmental scientists, data scientists, as well as international lawyers with experience on legal accountability in the area of

environmental crimes and ecocide. In the current environment of the ongoing war, gathering and processing data in Ukrainian laboratories that are not sufficiently equipped is problematic and might also be dangerous – thus, technical and equipment assistance on this front might also be required.

2. Develop a legal accountability mechanism for environmental crimes and ecocides. As mentioned in the chapter, it is not only international organisations but also legislation at the local level that contribute to the global recognition of environmental crimes and ecocides. Therefore, recognition and ratification of such legislation in domestic law should be coordinated at the EU level, which would then produce momentum and make it necessary to discuss it as well as legislate at the level of international organisations.

3. Ensure that Ukraine is compensated for environmental damages. The costs of the damages, as mentioned in the chapter, are enormous, and reconstruction will cost Ukraine even more. Some of these costs could be covered by reparations from Russia, yet the timing and readiness of Russia to pay them is unclear. Therefore, other creative ways need to be explored on how Ukraine could receive financial compensation with the support of the EU, US, and Canada (e.g., through frozen Russian assets).

4. Extensively engage with the Ukrainian government but also with international and Ukrainian civil society organisations that work on environmental topics in Ukraine, including the sustainable recovery angle. While many recovery proposals for Ukraine have already been formulated, the final product will have to be co-designed and co-approved in cooperation with the Ukrainian government, Ukrainian civil society, and local NGOs, as well as Ukrainians themselves. Therefore, proper inclusion of and engagement with diverse stakeholders has to take place immediately, through different platforms and a variety of formats.

5. Engage and monitor the Ukrainian government and Ukrainian civil society and local NGOs when it comes to the future green and sustainable recovery to avoid greenwashing. As there are still different visions of the ‘green recovery’, some of which are more environmentally oriented than others, there should be proper monitoring and accountability to ensure that more harm is not done to the environment during the implementation of sustainable recovery projects.

6. Include Ukraine as much as possible in projects related to implementing the EU Green Deal.

While the EU’s Green Deal is primarily an internal policy strategy, it nonetheless has an external dimension. As an EU candidate country, Ukraine, during its recovery process, will be going through stages corresponding to the requirements of EU membership. Thus, including Ukraine in the existing climate and environmental initiatives at the EU level would facilitate this process significantly. This is even more relevant as Ukraine aims to be an equal partner and contributor to the EU rather than a mere recipient of aid.

7. Mainstream the environmental and climate dimension in all areas of cooperation with Ukraine. Considering that it will take time to ameliorate the environmental damage done by the Russian invasion, those would have to be considered in all areas of engagement with Ukraine to prevent double harm. The environmental aspect should not be a separate chapter in the recovery plan or any other process of engagement with Ukraine but rather should serve as a vision that is mainstreamed throughout all strategic goals and actions.

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Cultural Heritage: From a Target of the War to the Cornerstone of Reconstruction

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<https://doi.org/10.53121/ELFTPS5> • ISSN (print) 2791-3880 • ISSN (online) 2791-3899

ABSTRACT

Russia's war against Ukraine has a clear ideological component that has led to significant and deliberate destruction of Ukraine's cultural heritage. While cultural heritage has become one of the main targets of Russia's war, culture itself presents a solution for the project of reconstruction. This chapter addresses the need to reconsider the role of culture and include it as a key component in all stages of the reconstruction process. With reference to the experience of Croatia's transition from a post-war country to a Member State of the European Union (EU), the chapter demonstrates the three-fold approach necessary for effective reconstruction efforts.

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INTRODUCTION

It is not by chance that Ukraine's cultural heritage has become one of the key targets of Russia's war. The scale of damages, reaching more than 1,100 cultural objects damaged or destroyed so far (Ministry of Culture and Information Policy of Ukraine, 2022), represents yet another manifestation of Russia's centuries-long policy of denying the existence of the Ukrainian nation, identity, and right to political self-determination (Movchan, 2022). This imperial policy has been threatened by Ukraine's choice to pursue European integration and adopt a European way of life. Russia's ideological beliefs prompted it, eight years after the annexation of the Crimean peninsula and occupation of the Donetsk and Luhansk regions in 2014, to launch a full-scale invasion of Ukraine in an attempt to retain Ukraine within its sphere of geopolitical influence.

Meanwhile, for Ukraine, this war is not only a matter of survival as an independent and sovereign state but also an opportunity to pursue historical justice and put an end to the notion of Ukraine as a buffer zone, once and for all. It allows Ukrainians to reaffirm their geopolitical and values-driven belonging to Europe and the democratic West. Finally, it has caused Europe to shift its perception of Ukraine as a borderland and see it as 'a place where Europe is being reborn' (Yermolenko, n.d.), with the reconstruction effort contributing to this process.

Considering the deep historical context and current geopolitical realities, a sustainable reconstruction process cannot be achieved without a thorough re-evaluation of the impact and role of culture, first and foremost on the national level, which should be reinforced by the reconstruction strategies as part of the state's policy.

PLACING CULTURE AT THE CENTRE OF THE RECONSTRUCTION PROCESS: LEVERAGING PROVEN STRATEGIES TO BRING NEW PERSPECTIVES

The need for reconstruction in Ukraine is undeniable; however, formulating a sustainable solution and strategy may prove challenging given the unprecedented extent of the devastation and the fact that hostilities are ongoing. While the recovery process should be sensitive to the current context of Russia's war against Ukraine, some already established reconstruction approaches and similar backgrounds among other European Member States should be taken into account.

Though not a novel idea, placing culture at the forefront of the reconstruction process has the potential to contribute not only to the physical rebuilding of infrastructure in affected communities but also to the construction of society, social relations, and standards of social behaviour to promote society's recovery and cohesion. The damage inflicted on Ukrainian society by the war can be best addressed through multi-layered and inclusive cultural reconstruction.

Firstly, physical reconstruction serves as an expression of defiance in the face of destruction. Introducing culture as a unifying element in the reconstruction of urban areas can bridge the gap between place-based and people-centred approaches, with the city being viewed primarily as a cultural construct (World Bank & UNESCO, n.d.: 9). This proposed approach entails the integration of culture throughout the whole reconstruction cycle, from needs assessment to the implementation process. Secondly, returning artefacts and revitalising non-material culture is essential to reclaiming cultural, social, and historical identity. Finally, re-establishing standards in social relations and behaviour and promoting a high level of protection of human rights for all is vital in addressing the long-term consequences of war.

Adopting this integrated approach to rebuilding through culture may open new perspectives for reconsidering and redefining the role of the affected area. Croatia's path from a post-war country undergoing transition to becoming a Member State of the European Union may offer a valuable case study on how to approach sustainable reconstruction efforts. Over centuries, Croatia's territory witnessed many historical and political changes that affected its people, culture, and heritage. In the last decade of the twentieth century, precisely from 1991 to 1995, Croatia struggled to resist greater

The damage inflicted on Ukrainian society by the war can be best addressed through multi-layered and inclusive cultural reconstruction

Serbian aggression as part of the latter's plan to keep the states within the Socialist Federal Republic of Yugoslavia (SFRY). The Homeland War, or War for Independence, left many painful scars on Croatia's territory and society.

Apart from the human loss and suffering, and deterioration of the economy and industry, the war caused heavy damage to Croatia's cultural heritage. The war destroyed or damaged more than 2,500 protected buildings, among which the largest number were religious buildings, and tens of thousands of movable cultural goods were looted during the aggression (Antolović & Jelić, 2013).

In this context, the revitalisation of the Šibenik fortress should be seen as a model example of reconstruction in a city where cultural heritage plays a pivotal role in the process.¹ Although a medieval city, until recently the image of the city was closely related to industrialisation – from the introduction of electricity in 1895, and throughout the twentieth century, Šibenik was an important industrial centre. Factories and industrial zones were the main factor in not only the economic but also the spatial and social development of the city. Due to its strategic location, Šibenik also had great military importance, with as many as ten barracks in the narrow area of the city (Barišić Bačelić & Pavić, n.d.). The city was heavily shelled during the recent war and many cultural heritage sites were damaged, including St James' Cathedral, today a UNESCO World Heritage Site.

Three decades after the war and the collapse of its industry, the arts, culture, and cultural heritage have become a key part of city life and play a central role in Šibenik's shift away from its industrial and military past. It has become a city where culture, heritage, and tourism are key factors in development and

quality of life, and it is an exemplary model for the revitalisation of a whole city through investment in cultural heritage.

FORTIFYING SUSTAINABLE RECONSTRUCTION: A THREE-FOLD APPROACH

The transformation of Šibenik city was made possible thanks to the city's official development strategy of 2011, which prioritised the revitalisation of cultural heritage.² The availability of European Union (EU) funding, including European Regional Development Funds and Pre-Accession Instruments, proved crucial in enabling the city to undertake large-scale cultural investments and extensive restoration work on its heritage sites (Le Gall & Van Rompaey, 2021).

It could be said that EU funds are responsible for Šibenik's second renaissance, but EU support for the restoration of cultural heritage comes with strings attached. First, a political decision is needed that will place culture as one of the foundations of the future development of the city. It is also necessary to strengthen the capacities of the city administration in order to successfully draw on EU funds. The success of Šibenik's approach is also attributed to a decentralised management model and the diverse expertise of its team. Specifically, the fortresses, together with two other cultural venues, are managed by the city's public institution Fortress of Culture, which is independent but works closely with the city's administration.

The implementation of complex EU projects is an equally demanding task, especially when, as in the case of Šibenik, the activities range from conservation and restoration to significant construction interventions to the implementation of modern technologies for cultural and historical heritage. Upon completion of the restoration project, the owners of cultural assets face perhaps the most significant challenge – creating conditions for the sustainable operation of the restored monuments and their new contents and purposes.

The case of Šibenik highlights the critical importance of a three-fold approach to effective reconstruction efforts. Firstly, political leadership and strategic vision at the national level are essential to place culture as a policy priority. Secondly, the active and direct participation of local communities and governance is crucial in the reconstruction process. Finally, cultural institutions should have not only sufficient financial resources, but also operational independence and capacity, as well as specific expertise and experts to effectively manage the reconstruction effort.

RETHINKING THE ROLE OF CULTURE IN NATIONAL POLICY: BREAKING PATTERNS

Perhaps surprisingly, culture has traditionally been a low priority for state policy in Ukraine. The challenges of the war have further emphasised the negative implications of the neglect of culture, insufficient funding, and lack of a comprehensive national strategy. For instance, the absence of a robust system for registering and documenting cultural heritage and values has resulted in challenges in accurately assessing the extent of losses incurred as a result of the war (Kyiv School of Economics Institute, 2022), an 'unfortunate trend' that has persisted during the war, although current circumstances may justify it to some extent.

At the same time, the devastating impact of the war and the subsequent need for reconstruction present an opportunity for Ukraine to rethink the role of culture. Even though transforming this perception is obviously a complex and challenging task with a long-term perspective, the momentum of Ukraine's integration into the EU and its reconstruction process could serve as an irreversible turning point.

The first step in this regard has been made by Ukrainian policy-makers by introducing a draft law that recognises cultural heritage as a matter of national security and a strategic interest of national policy.³ Importantly, the preservation of cultural heritage is reframed in a broader sense, beyond its original objective of countering illegal reconstruction or damage, including archaeological explorations and excavations, to encompass the importance of cultural heritage as a constituent part of national identity and world cultural heritage.

It should also include safeguarding ethnic diversity in the territory of Ukraine. Here, additional efforts should be made to preserve the Crimean Tatar culture, which has been under constant threat of extinction since the Russian annexation of the Crimea peninsula in 2014 (EPRS, 2022). Moreover, the idea behind the draft law is to finally recognise on the legislative level the need for a complex approach to cultural heritage, including its tangible, non-tangible, and environmental components.

The approach is not a new concept among EU Member States, as Lithuania's legislation on cultural heritage also integrates cultural policy as a key pillar of its national security system. This Baltic nation, which has historically taken its own path of resistance to Russian suppression, has incorporated in national law the state's duty to protect cultural heritage from 'the destructive influence

of the anti-humanistic pseudo-culture, foster the Lithuanian language and safeguard the intellectual potential and the cultural heritage of the Lithuanian nation and ethnic communities'.⁴

Stipulating this policy shift in legislation is only the first step, but it is an important initiative to place culture on the 'next level' of perception at the national level, thus making the issue of its funding and institutional capacity-building an inevitable part of national security priorities and the post-war sustainable development of the country. In the context of reconstruction efforts, this shift is highly promising as it may give impetus to placing culture at the forefront of the recovery process and ensure that rebuilding initiatives are not a disjointed and chaotic endeavour but a component of a comprehensive national strategy that is aligned with other cultural policy objectives.

DECENTRALISATION IN ACTION: INVOLVING LOCAL GOVERNANCE AND COMMUNITIES

Strengthening the national strategic view should neither undermine nor exclude local communities and governments from the reconstruction effort. This risk was highlighted by the International Law Association Committee on Participation in Global Heritage Governance, which stated that 'heritage identification and safeguarding are not an exclusive prerogatives of the state ... but instead primarily of affected heritage communities' (Jakubowski et al., 2022: 44). In fact, local communities should be actively involved throughout the whole reconstruction effort.

This introduces the next challenging task: how to engage local communities and governments in the process. Here it is crucial that decentralisation reform, one of the most successful reforms to date, is completed, thus ensuring greater autonomy and powers as well as increased financing at the local level. While local authorities are part of the administrative system and thus will be involved in the reconstruction effort, special attention is needed to raise awareness and ensure the participation of citizens and civil society representatives from the affected areas. This may be challenging, especially given the complete destruction of some areas near the front line and the large number of internally displaced persons.

One approach that has had a long-term effect in Croatia was the adoption in 1999 of the Law on the Protection and Preservation of Cultural Goods.⁵ With the introduction of this legislative initiative, the conservation service organised within the

Croatian Ministry of Culture became responsible for establishing the protection of goods and publicly announcing and explaining the reasons for protection and the measures that would ensure preservation. As a result, the protection of cultural heritage became the task not only of the conservation service but also of all citizens as well local authorities. Among its roles has been the labelling of cultural assets and the publication of the Register of Cultural Heritage of the Republic of Croatia (Ministarstvo kulture i medija, n.d.), as well as research on cultural assets to promote heritage as a significant element in Croatia's cultural identity among the citizens and encourage their involvement.

The recent study 'On protecting cultural heritage from armed conflicts in Ukraine and beyond' provides a comprehensive overview of the initiatives introduced on the EU level to safeguard cultural heritage in Ukraine, while the document itself acknowledges that numerous other organisations are carrying out similar projects (Campfens et al., 2023). The majority of the initiatives are currently addressing immediate challenges, such as monitoring damages, preventing further harm to monuments and sites, and digitising data for assessment purposes. While many initiatives involve local organisations, experts, and coordinators, it is important to also prioritise the long-term perspective in order to enhance local communities' self-reliance and ownership of the reconstruction process. This can be achieved by sharing expertise in developing recovery plans, managing organisations and funding, and reporting, among other means.

INSTITUTIONAL CAPACITY-BUILDING: DRIVING FORCES FOR SUSTAINABLE CHANGE

The experience of Croatia has shown that safeguarding and restoring heritage is a critical matter during the post-war recovery phase, requiring substantial institutional capacity, expertise, and financial resources. In view of this, we propose a broader interpretation of the term 'institution' which encompasses not only national-level authorities such as ministries and agencies, but also state-level and local cultural institutions, in order to effectively address this issue.

The systematic evaluation and documentation of cultural heritage, as well as the comprehensive restoration of war-damaged and destroyed cultural heritage, pose long-term challenges that require institutions at all levels to possess the necessary readiness and ability to effectively manage the process.

In Croatia, the National Program for the Protection, Preservation and Restoration of Cultural Goods was developed for this purpose in 1996, covering the period from 1997 to 2006 and prioritising, among others, the following conditions:

- establishing a new legal system for the protection and preservation of cultural heritage;
- developing a financing system for the protection and preservation of cultural heritage;
- strengthening and professionally training staff, and speeding up the development of restoration activities;
- developing professional and scientific cooperation; and
- adopting incentive measures for the protection, restoration, and maintenance of cultural heritage (Antolović & Jelić, 2013).

With respect to the national context, all these points are relevant for the effectiveness of the reconstruction process in Ukraine and highlight some of the areas in which institutional capacities ought to be strengthened for this purpose. While the need to introduce a new legal system for the protection and preservation of cultural heritage may be a matter of debate, there is a pressing need to enhance the system of registries and records, which constitutes a crucial precondition for the systematic evaluation and documentation of cultural heritage.

As stated previously, the absence of a strategic vision at the national level has significantly influenced the current functioning of the system. Among the problems to be addressed is the lack of a unified approach to establishing a single registry system for cultural objects. Various registers have been developed sporadically for different objectives, and the Ministry of Culture has not put forth a comprehensive solution to address this issue. Other obstacles include the absence of electronic records (museum record-keeping is mostly in paper form) (Museum of Contemporary Art, 2023).

Prior to the active stage of the reconstruction process, it will be essential to organise the system of state registries and to digitise record-keeping. This step is crucial not only for damage assessment and calculating reparations but also for managing the reconstruction process effectively and providing the foundation for future scientific research. Following the outbreak of war, the Ministry of Culture initiated the process of digitising museum funds, with 12 leading museums participating in the project's test phase (Ministry of Culture and Information Policy of

Cultural institutions need to have sufficient powers, independence in decision-making processes, and financial capacity

Ukraine, 2023a). However, the task is highly ambitious and necessitates further action and support from international partners to expand it to cover the entire country.

It will also be necessary to ensure that state-level and local cultural institutions can efficiently manage the reconstruction process. As the case of Šibenik fortress demonstrated, cultural institutions need to have sufficient powers, independence in decision-making processes, and financial capacity. However, the current legislation in Ukraine imposes limitations on the autonomy of public institutions, making it difficult for cultural institutions to operate effectively on a daily basis.

In Ukraine, public cultural institutions have the legal standing of either an organisation (institution) or an enterprise, both of which suffer from various limitations in their activities. These limitations include restrictions on receiving financing from multiple sources simultaneously; the inability to independently approve the organisation's structure, staff lists, and employee numbers; and constraints on transparent profit-generating activities such as renting out space for restaurants or cafes or selling merchandise. Additionally, the management structure that relies on a head of the institution who is dependent on the founder is ineffective (Museum of Contemporary Art, 2023). As a result, the administrators of cultural institutions lack the necessary authority to respond effectively and promptly to the recent challenges, which may also complicate the reconstruction management process.

Finally, strengthening expertise and fostering institutional cooperation will be critical for moving forward. As highlighted in the Croatian National Program, having a professional and knowledgeable staff is a key component of effective reconstruction. The post-war reconstruction has to encompass four different aspects of cultural rebuilding or rebuilding through culture:

- Rebuilding cities and towns and their historical nuclei requires historical documentation and urban planners.
- Reconstructing or rebuilding damaged or destroyed historical heritage buildings requires architects and conservation experts.
- Returning looted artefacts requires detailed documentation, diplomats, and art historians.
- Reconstructing non-material culture, such as customs, oral histories, stories, dances, songs, and beliefs of regions, villages, and ethnic groups requires documentation, anthropologists, ethnographers, musicologists, and historians.

Representatives of the Ministry of Culture of Ukraine have also acknowledged the issue of insufficient experts on the ground (Ministry of Culture and Information Policy of Ukraine, 2023b). To address this challenge, professional and scientific cooperation with international partners, including sharing of expertise, exchange programmes, study visits, and training, can be instrumental. Collaborative initiatives for experience exchanges, aimed at assessing needs and developing policy strategies, could be mutually beneficial for European and Ukrainian stakeholders.⁶

CONCLUSIONS AND POLICY RECOMMENDATIONS FOR THE EU

Russia's war against Ukraine has inflicted extensive damage on the cultural heritage of Ukraine, with over 1,100 cultural objects destroyed to date. The destruction of these cultural artefacts threatens not only Ukraine's national identity but also the legacy of Europe and its core values. To safeguard Ukraine's cultural identity, both immediate challenges and long-term reconstruction strategies must be addressed. Emergency measures are focused on preserving cultural heritage through the documentation of damages for subsequent reparations, protection from further destruction, and conservation, while the long-term policy and the role of cultural heritage in the post-war recovery of Ukraine requires further consideration.

Drawing upon Croatia's experience transitioning from a post-war country to an EU Member State, a three-fold approach is deemed necessary for effective reconstruction efforts. This approach entails prioritising culture at the national level, engaging local and regional authorities, and enhancing the financial and managerial capacity of cultural institutions. By prioritising these policy directions, the reconstruction process may help Ukraine not only

to reconstruct and safeguard its damaged cultural physical objects, but also to preserve its national identity as a component of Europe's cultural diversity. The EU can contribute to this process by facilitating the following recommendations:

- Recognise the need to place cultural heritage at the centre of the reconstruction process at all stages, from needs assessment to implementation, to ensure that the physical rebuilding of infrastructure in affected communities is aligned with broader social recovery and cohesion objectives.
- Advocate for prioritising culture as a matter of national security on the state level given the ideological and genocidal intent of Russia's attacks on Ukrainian cultural heritage since the beginning of the war in 2014.
- Encourage the development of a national strategy on protection, preservation, and restoration of cultural heritage in Ukraine, which encompasses intangible and tangible heritage as well as environmental components, aimed at safeguarding ethnic diversity, including preservation of the Crimean Tatar culture. The reconstruction effort should be part of a comprehensive national strategy aligned with other cultural policy objectives.
- Promote the idea of strengthening public cultural institutions at all levels, starting with the Ministry of Culture of Ukraine as a key stakeholder in formulating and implementing cultural policy in Ukraine, as well as providing operational autonomy and financial capacity to public cultural institutions by removing existing legal restrictions.
- Provide technical assistance to facilitate the establishment of a unified system of registries of cultural heritage in Ukraine and the digitalisation of museum record-keeping to improve the accuracy and accessibility of information, which will be essential for effective decision-making during the reconstruction process and in further research activities.
- Provide technical support to state-level and local cultural institutions to develop their expertise and improve their competencies in modern cultural management practices, such as project planning, budgeting, promotion, reporting, and auditing.
- Encourage continuous experience exchanges in all related areas, including policy development, best practices, and techniques for the restoration and preservation of cultural monuments.
- Foster international and cross-institutional cooperation by providing membership for Ukrainian

cultural institutions in European cultural associations and organisations.

- Support the creation and development of research and analysis institutions and facilities in Ukraine, with a focus on cultural heritage, history, and contemporary cultural practices. This includes providing funding and resources for research and analysis, as well as promoting cooperation with international research institutions.

NOTES

1. Šibenik, situated in the middle of the eastern Adriatic coast, is the 11th largest city in Croatia, with around 31,000 inhabitants in 2021.
2. The revitalisation included mainly the oldest city fortress, St Michael's. That very first cultural heritage revitalisation project was followed by another two – Barone and St John's fortress.
3. The corresponding draft law has been registered in the Parliament of Ukraine (draft law № 9072 as of 02.03.2023), <https://itd.rada.gov.ua/billInfo/Bills/Card/41472?fbclid=IwAR0vPpK30tG8r2CLEJHDMOdmh3gGeklO4HVVVUxABJTkW8JIVEH38oW6UU>.
4. Republic of Lithuania Law on the Basics of National Security, <https://e-seimas.lrs.lt/portal/legalActPrint/lt?fwid=9tq147ume&documentId=TAIS.39790&category=TAD>.
5. Zakon o zaštiti i očuvanju kulturnih dobara, https://narodne-novine.nn.hr/clanci/sluzbeni/1999_07_69_1284.html.
6. The format of policy labs was introduced by the ERSTE Foundation and the Ministry of Culture and Information Policy of Ukraine in December 2022, which led to the development of practical recommendations for cultural heritage to contribute to Ukraine's recovery and EU accession and involved the participation of representatives from both Ukraine and Europe: <https://keanet.eu/wp-content/uploads/CPL-design-.pdf>.

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Ukrainian Civil Society: A Key Actor in the Post-War Reconstruction and EU Accession Process

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<https://doi.org/10.53121/ELFTPS5> • ISSN (print) 2791-3880 • ISSN (online) 2791-3899

ABSTRACT

In times of peace, Ukrainian civil society was not always recognised for its strength and speed of action, yet Russia's acts of aggression have showcased the huge potential of Ukrainian civic action. This chapter focuses on how the EU can best support civil society in Ukraine and consider Ukrainian civil society a key player in both the post-war recovery and EU integration processes. After exploring the current role and structure of Ukrainian civil society, as well as the needs that have emerged since the war started, the chapter looks at the EU measures and funds available to civil society in Ukraine. Based on this state of play, ten recommendations are offered as to how the EU should include and support civil society in both the reconstruction and accession processes.

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INTRODUCTION

When Russian President Vladimir Putin decided to invade Ukraine on 24 February 2022, he expected to take over the country in a matter of days. Instead, the Russian army was met by well-prepared Ukrainian armed forces, supported by a fiercely resistant Ukrainian civil society. Putin had vastly underestimated the strength and resilience of Ukrainians in defending their country. He had not expected civic action to play such a crucial role in the defence of the country. Civil society has remained a core pillar of defence against the Russian aggression in Ukraine – to the point that some even claim that 'civil society has become de facto a security actor' (Puglisi, 2015).

As early as 2014, when Russia first invaded Ukraine, Ukrainians started organising themselves to counter the Russian aggression: 65 per cent of Ukrainians donated money, mostly to the army, and 15 per cent volunteered to support the defence of the country (Martin & Zarembo, 2022). While in times of peace Ukrainian civil society was not always recognised for its strength and speed of action, Russia's acts of aggression have showcased the potential of Ukrainian civic action. When Russian tanks rolled over the border, civilians came together to 'get things done'.

Since then, civil society has been central to several aspects of the resistance against Russia. Civil society organisations quickly reoriented their work, mostly to provide humanitarian aid, including much needed food, hygiene, and medical supplies. Many of them also started providing assistance to internally displaced persons (IDPs), helping them with evacuation, temporary accommodation, humanitarian

and financial assistance, as well as legal help. Non-governmental organisations (NGOs) also engaged in helping the Ukrainian armed forces and other public authorities, such as the State Emergency Service.¹ In addition, civil society took over other tasks that became relevant in the war context, such as 'documenting atrocities and war crimes, reporting environmental and cultural heritage destruction as well as organising the spread of independent information and access to vital services' (Civil Society Europe & European Environmental Bureau, 2022).

The European Union (EU) has promised unwavering support to Ukraine in response to the war of aggression, as reiterated by Commission President Ursula von der Leyen and Council President Charles Michel: 'We will stand alongside Ukraine for as long as it takes' (European Council, 2023). In this context, the EU should consider civil society a key player in both the war effort and the recovery process. Firstly, a broad spectrum of Ukrainians can be reached in all regions thanks to civil society actors. Secondly, civil society provides expertise to the government and fulfils a watchdog function. Finally, it has an in-depth view of the needs on the ground, which could also help local authorities in the reconstruction. These reasons alone should be sufficient for Ukrainian civil society actors to be direct recipients of reconstruction funds.

Besides ensuring a successful recovery, the EU should also support civil society to further the accession process. In June 2022, only a few months after the Russian invasion, Ukraine was granted EU candidate status. This gives Ukraine access to pre-accession funds as well as technical assistance to align with EU legislation. In view of this process, the European Commission should consider civil society an important ally to move forward institutional reforms, strengthen the rule of law, and fight corruption in the country.

In this context, the chapter analyses how the EU could best support and collaborate with civil society in Ukraine. First, it explores the current role and structure of Ukrainian civil society, as well as the needs that have emerged since the war started. Then it discusses the EU measures and funds currently available to civil society in Ukraine. Based on this state of play, it concludes with ten recommendations for how the EU should further support and include civil society in both the reconstruction and accession processes.

UKRAINIAN CIVIL SOCIETY: STATE OF PLAY AND ROLE IN THE WAR

Civil society in Ukraine is, in comparison with other countries in the region, relatively well developed and sustainable (USAID, 2021: 6). However, challenges arise for funding as civil society organisations are not always formally established as associations and often work within structures based on networks, which can create difficulties for funders as they do not have one direct contact partner to deal with financial questions. Larger, more professionalised civil society organisations (CSOs) are often based in Kyiv and have professionalised structures and staff. Those CSOs often work on a broad range of issues, provide sub-granting programmes for smaller organisations, and engage in advocacy activities in national politics. At the local and regional levels, civil society is mostly organised through grassroots and informal networks, and before the war of aggression they had little or no contact with local authorities, which were sceptical of their work.

According to the CIVICUS Civil Society Index, Ukraine continues to have an 'obstructed' civil society, which means it is only partly free to operate. The Ukrainian government should therefore work to improve the environment for civil society. Indeed, Ukrainian civil society still faces some challenges that need to be addressed. Civil society is insufficiently institutionalised; many CSOs have short life cycles; a lack of 'charitable practices' can be observed, as well as a lack of coordination within the sector, including poor communication with donors (Zagorij Foundation, 2020).

However, according to the Sustainability Index developed with USAID, in 2020 Ukrainian civil society had an overall sustainability level of 3.2 on a scale from 1 (enhanced) to 7 (impeded), which means its sustainability was 'evolving' but not yet 'enhanced' (CIVICUS, 2021; USAID, 2021; Freedom House, 2022). This includes the legal environment, organisational capacity, financial viability, and public image, among other criteria. The level of public trust in civil society in Ukraine is fairly high: it tripled from 2014 to 2017, moving from 13 per cent to 37 per cent (Giuashvili, 2022: 14). This could be the result of civil society actors contributing significantly to policy developments in recent years. For instance, the DiXi Group, a think tank, has worked on the integration of Ukraine in the European energy market and improved Ukraine's energy security.

In addition, before the Russian war, progress could be observed in the increase in the number

Civil society's role as a watchdog was already crucial before the war started

of charitable organisations, the emergence of more professional associations at the local level, and the creation of the Ukrainian Philanthropic Marketplace (Zagoriy Foundation, 2020). In addition, civil society's role as a watchdog was already crucial before the war started: 'Civil society remains one of the strongest actors and drivers of reform in Ukraine' (Bidenko, 2018). Ukrainian civil society played a critical role in the fight against corruption. It was civil society that pushed for the establishment of the High Anti-Corruption Court, a body which has been operational since September 2019 and serves as an important stepping stone for the reforms demanded by the EU (Giuashvili, 2022: 13).

Despite its limited level of institutionalisation, Ukraine has a very active citizenship. The response to the war of aggression has shown that Ukrainians have civic action in their DNA. A wide range of volunteer networks quickly developed and started working on nationwide efforts to resist the Russian invasion; other organisations reoriented their work to support the war effort. Many CSOs found ways to continue operating despite the difficulties they faced. Those located in areas under occupation or in the midst of hostilities moved to safer locations, while those located in safer regions faced new tasks in addition to their regular work, such as welcoming IDPs, and tried to continue operating despite disruptions such as rocket attacks, power cuts, and team members leaving the country. Civil society had to deal with a range of new issues, such as 'the need to quickly change the activities of the organisation, the loss of personnel, severed professional ties with partner organisations and the need to change the reporting system due to changes in the scope of activities, transformation of projects'.²

Despite those difficulties, most CSOs have continued their work. In a study conducted in April 2022, 60 of the 98 organisations surveyed indicated that they had continued their work full time since the war began; 32 organisations continued with some parts of their work; and only six organisations had

stopped their work entirely after the full-scale invasion (Zagoriy Foundation, 2020). Civil society actors also noted that certain public authorities had started adopting a more inclusive approach towards civil society in the war context. In one instance, civic activists could more easily access the mayor in Kharkiv and felt that the recognition of civil society's role in the war had increased.³

THE EU SUPPORTS UKRAINIAN CIVIL SOCIETY, BUT NOT SUFFICIENTLY

While civil society has played a significant role in the war effort, it has also proven to be an important actor of change in times of peace, especially in terms of democratisation and implementation of national reforms. The EU was by far the largest supporter of Ukraine before the war. In the years 2014–2021, Ukraine received funding mostly in the form of grants and loans for financial and humanitarian support, but almost no military aid. This changed after the Russian invasion in 2014, and even more so since 24 February 2022. Several funding lines were opened to support the Ukrainian armed forces, its economy, and society through a range of programmes (Antezza et al., 2022: 19). The EU committed loans and grants through the European Peace Facility, the Macro-Financial Assistance programme, the EU Civil Protection Mechanism, the European Investment Bank, and the European Bank for Reconstruction and Development. It also established the 'Stand Up for Ukraine' pledge in 2022 to help support IDPs and refugees, which mostly goes to EU neighbouring countries welcoming refugees fleeing the war. For 2023, the European Commission announced an EUR 18 billion aid package for Ukraine – but without detailing whether any of the funds will be directed towards civil society. In terms of recovery, the EU is in the process of establishing the Rebuild Ukraine Facility, aimed at providing funds for reconstruction.

The bilateral relations between the EU and Ukraine are mostly governed by the Association Agreement (AA), which entered into force in 2017 and has been implemented since then. While civil society does not seem to receive direct funding through this framework, CSOs have been included in the implementation of the AA through the 'EU–Ukraine Civil Society Platform'; they can give recommendations on the reform process through this channel. Since Ukraine was granted candidate status in June 2022, the country also has access to pre-accession funds, the so-called Instrument for Pre-accession Assistance. As the budget has already

been allocated in the framework of the Multi-Annual Financial Framework, these funds are unlikely to be re-allocated before the next round of negotiations in 2027. In addition, Ukraine already receives funding for its fight against Russia and to support the state's functioning. However, as a candidate country, Ukraine also has access to funding programmes such as Erasmus+, Horizon Europe, and the LIFE programme for climate action and clean energy. Currently, the European Commission appears adamant to centralise the support given to Ukraine through the Rebuild Ukraine Facility (Balás, García Molyneux, & Szewczyk, 2022). Civil society does not seem to have been the focus in its funding decisions since the start of the Russian war of aggression. For this reason, several civil society organisations have requested the inclusion of direct funding for reconstruction efforts (Civil Society Europe and European Environmental Bureau, 2022).

In view of the plethora of different funding schemes for which Ukraine is eligible, it is difficult to quantify the exact amount of EU funding that is available to Ukraine and which of these programmes include direct support to civil society.⁴ What is certain, however, is that the EU undoubtedly supported civil society in Ukraine before the war and continues to do so since 24 February 2022. According to Commission sources, civil society has received EUR 125 million since the start of the war of aggression, mostly through the Neighbourhood, Development, and International Cooperation Instrument (NDICI) (approx. EUR 80 million), as well as thematic and Eastern Partnership funds for regional projects (approx. EUR 15 million). In the future, of the around EUR 200 million earmarked for Ukraine in the NDICI instrument, around EUR 30 million will go to civil society, which is around 10–20 per cent of the funding from this programme.⁵

For instance, the Eastern Partnership Civil Society Facility provides capacity-building and network activities, runs a fellowship programme, and carries out studies on civil society in Eastern Partnership countries. The EU also gives out funding to large Ukrainian civil society organisations and provides funding for regranting mechanisms. A good example of such a scheme is the one run by the Kyiv-based International Renaissance Foundation, the EU4USociety project (International Renaissance Foundation, n.d.).

The European Commission also employs a range of strategies for its funding; however, those strategies have not yet been adapted to the war context, as emergency funding has been the highest priority.

In its Multi-Annual Indicative Programme running from 2021 to 2024 for Ukraine, the EU notes that civil society will be engaged in all priority areas and that it will focus its support on 'awareness-raising, capacity building, advocacy, expertise and social service provision roles' (EEAS, n.d.b). The 'EU Roadmap for Engagement with Civil Society in Ukraine 2018–2020' outlines how the EU intends to include civil society in its programme implementation. The document also mentions the close cooperation with the European Endowment for Democracy to engage new civic actors and independent media. Direct funding to Ukrainian civil society seems to be available mostly through the NDICI–Global Europe programme, which includes the European Instrument for Democracy and Human Rights and the Thematic Programme for Civil Society Organisations.

In the evaluation process of these programmes, the EU found that civil society still faces challenges in accessing and using EU funds. It noted that while financial support has become more flexible, less cumbersome in terms of administration, and more inclusive, civil society still faces hurdles in accessing funding schemes. It also found that the funding does not yet contribute to the financial sustainability of CSOs, and that it does not go far enough in promoting cooperation (EEAS, n.d.a). The assistance should also be better tailored to the geographical context and include more re-granting schemes to smaller civil society actors (EEAS, n.d.c). Finally, the programmes were fairly successful in capacity-building within CSOs, especially in terms of programme, project, and financial management, but they did not provide enough support for internal governance, analysis, and advocacy skills. These recommendations should be taken into consideration when engaging and supporting civil society in Ukraine in the reconstruction process.

TWO OBJECTIVES: UKRAINE'S POST-WAR RECONSTRUCTION AND EU ACCESSION

The EU should pursue two objectives in the coming years: invest in the post-war reconstruction process and link it to the reform programme for EU accession. For those parallel processes to be successful, the EU should consider civil society a key partner. As the chair of the DEJURE Foundation, Mykhailo Zhernakov (2022), explains, 'Ukraine's international partners need to recognise that investing in the country's civil society is a strategic step that will yield a high return'. In the context of the war, civil society in Ukraine has reported that most donors

The EU should not wait until hostilities have ended to invest in reconstruction efforts

adapted their funding quickly to the needs on the ground and that it was relatively easy to get funding for projects. However, it is crucial that this direct support continues in the foreseeable future.

Firstly, the EU should not wait until hostilities have ended to invest in reconstruction efforts – the need for housing infrastructure, education, health, and mobility has drastically increased since Russia began to fire rockets into Ukraine. Civil society should be considered a key player in those recovery efforts: CSOs provide crucial services to the civilian population, ranging from management of IDPs to humanitarian and medical assistance. The EU should therefore provide direct funding to civil society organisations and involve them in the negotiations on reconstruction. The Lugano principles, which were agreed during the first recovery conference in Switzerland in July 2022, mention domestic participation and multi-stakeholder engagement as two pillars of the reconstruction effort (World Bank, Government of Ukraine, & European Commission, 2022: 36). These principles should also ensure civil society has a seat at the table when negotiations on the Rebuild Ukraine Facility begin.

The focus of the funding should be adapted to the situation on the ground. Humanitarian relief, support to IDPs and refugees, and ensuring food and water supplies as well as medical assistance and hygiene should be the highest priorities as long as the war continues. Similarly, civil society contributes to securing basic access to public services such as healthcare and education. In western Ukraine, which is less affected by the war than the eastern regions, NGOs work primarily with IDPs and manage relations with the hosting communities, but they also engage with citizens in the regions that have suffered from the Russian occupation. In formerly occupied territories, civil society actors are likely to focus, at first, on supporting the basic reconstruction of infrastructure, such as housing, energy and electricity, roads, and trains. Civil society could support local authorities by

providing them with urban planners and architects, as well as people with the skills to de-mine and remove military waste. Countering Russian propaganda will also be an important task, as Russia has been funnelling money to CSOs focused on 'traditional Slavic values', promoting the Russian language or religious organisations. Civil society could also play an important role in providing the infrastructure for exchanges and capacity-building between Ukrainian and international experts on the recovery.

The list of areas in which civil society can contribute to the reconstruction effort is almost endless. They include educational needs and youth policies, especially as the war has taken many children and young people out of schools, but also to include retraining and upskilling for those who had to flee; the obvious need for hospital support and medical equipment, as war injuries require a specific kind of treatment; and investing in services for rehabilitation and psychological support due to war-induced trauma. Civil society could also play an important role in advancing the inclusion of people with disabilities, establishing rehabilitation centres, and supporting war veterans.

Civil society should be seen as an important ally of public authorities and international donors in ensuring the well-being of the Ukrainian population. Besides the moral obligation to support human lives and their well-being, early investments in the recovery will avoid higher costs in the future, for instance due to unaddressed health issues or a lack of education leading to skills shortages and potential economic losses. The Russian war not only costs human lives and creates unthinkable suffering and hardship. It also affects Ukrainian society as a whole, and it will have a long-lasting impact if the damage inflicted by Russia is not remedied through active recovery measures.

Secondly, the EU should also fund Ukrainian CSOs in view of the country's EU accession process. Civil society will play an important role in Ukraine's path to accession, especially in developing and implementing the reform agenda to fulfil the Copenhagen criteria and to take up the *acquis communautaire* (Giuashvili, 2022: 2). The EU should actively fund civil society organisations that will push for new legislation to align with the EU *acquis* and put pressure on public authorities to develop and implement the necessary reforms, especially in the fields of public governance, rule of law, and media independence, but also in terms of current EU initiatives, such as the green and digital transitions.

Civil society plays a crucial role in Ukraine's democratisation efforts

These CSOs can not only serve in watchdog, monitoring, and evaluation roles, but can also actively support the Ukrainian government and regional authorities in various policy fields, including security, the economy, decentralisation, environmental policy, and digital policy.

Civil society also plays a crucial role in Ukraine's democratisation efforts, in particular in institutional reforms, rule of law, and anti-corruption work. To that end, 'the EU should consider its civil society support as a tool for long-term democratic support' (Porschlegel, 2022). The experience of the 2021 judicial reform process has proven that civil society performs an essential watchdog function that should be actively supported by the EU (Zhernakov, 2022). By investing early on in a sustainable and independent civil society ecosystem, the EU will be able to counter developments such as those observed in Poland and Hungary, but also in Romania and Bulgaria, where the space for civic actors has shrunk. Unfortunately, Ukraine is no more immune to those threats than any other country in Europe. Therefore, the EU should be careful to fund civil society organisations that are compatible with EU values, including those focused on LGBTQI and women's rights as well as refugee protection (Gordon, 2020). A particular focus should also be

put on media standards and supporting local media outlets, to ensure that they do not fall under the influence of local businesspeople or become instrumentalised for political aims.

Finally, the EU could explore links between funding aimed at accelerating the accession process and at supporting reconstruction efforts. For instance, the war has caused considerable environmental damage, with consequences for agriculture and food security; while recovering, Ukraine could also ensure more climate-friendly agricultural practices. In addition, the EU could support the development of technologies aimed at the recovery, for instance to clean military waste from soil using digital solutions, which would also further the digital transformation.

STRENGTHENING UKRAINIAN CIVIL SOCIETY: POLICY RECOMMENDATIONS

Without its resilient civil society, Ukraine would not have been able to resist the Russian aggression so efficiently. The force of civic action should be a clear sign for EU institutions and policy-makers that without a strong civil society, democracies cannot defend themselves. The EU should therefore provide stable and continuous support to Ukrainian civil society, both in its role to further counter the Russian attack and in the recovery, as well as in the accession process to the EU. Strengthening the civic ecosystem will greatly contribute to the resilience of Ukrainian democracy and should be an integral part of the country's path towards EU membership.

The European Commission should ensure consistent, coherent, and flexible support to Ukrainian civil society, throughout the war effort and in its

BOX: Recommendations for the EU to support Ukrainian civil society

1. Ensure civil society inclusion and funding in the recovery process.
2. Ensure coherence of funding at EU level, for instance by establishing a specialised task force for Ukraine.
3. Consider civil society a key partner in the accession process.
4. Promote re-granting mechanisms to support regional and local civil society organisations.
5. Provide long-term, institutional funding, rather than only project-based funding.
6. Invest in capacity-building, for instance on advocacy skills, project management, and financial sustainability.
7. Strengthen partnerships and coalition-building, including with diaspora communities in EU neighbouring countries.
8. Drastically reduce bureaucratic barriers, especially in the war context.
9. Avoid potential replication or duplication with other donors.
10. Invest in further research to better understand the needs of Ukrainian civil society.

aftermath. While the EU has failed to sufficiently support civil society within EU Member States – a factor that has contributed to ‘democratic backsliding’ – it should not repeat the same errors with candidate countries.

Thus, the EU should ensure that civil society actors play the role they should in the recovery and accession processes. The following recommendations outline potential avenues for improvement. Ideally, they should be considered as part of a larger strategy by the EU to support civil society in Ukraine. Above all, the EU should ensure that the support itself remains the priority, and that other factors, such as donor visibility and reputation, international recognition, and political instrumentalisation, do not hinder the help they provide.

- 1.** The EU should start providing direct funding to civil society through its recovery funds, for example through the Rebuild Ukraine Facility. The funding should be speedy, flexible, transparent, and adapted to the needs on the ground. In addition, civil society should be actively included in the recovery process as an equal dialogue partner in the recovery conferences and have an active role during negotiations.
- 2.** The European Commission should ensure coherence among its funding programmes. Creating a task force to coordinate the support to Ukraine within the European Commission could be considered, in order to avoid replication and confusion, as well to serve as a ‘contact point’ for both Ukrainian actors and international donors.
- 3.** Civil society should be considered a key partner in the accession process. The objectives of EU funding should be twofold: to provide support to civil society actors who work on structural change, for instance through government advocacy and watchdog functions; and to provide funding to organisations working on the ground, for instance providing healthcare or educational services at the regional level.
- 4.** The EU should promote re-granting mechanisms and ensure that funding is also available to smaller and/or newly established organisations without a history of receiving EU grants, as well as more informally organised networks. It is crucial that Ukrainian communities are beneficiaries of EU integration across the Ukrainian territory. Especially in the eastern and southern regions, civil society could raise awareness of the EU’s objectives and values – for instance with farmers on the Common Agricultural Policy; with students about the opportunities of Erasmus+; or within local communities

about the benefits of gender equality or environmental protection. While public support for the EU is very high in Ukraine, with approximately 80 per cent of the population in favour of EU membership, it remains vital that citizens understand what membership entails and that the EU is ‘seen’ as benefiting the entire population and not only a political or wealthy elite. Until now, EU funding has often gone to professionally organised CSOs with an existing grant history (USAID, 2018).

5. The EU should consider long-term, institutional funding, rather than solely project-based funding. The latter does not contribute to the financial sustainability of organisations, and it leads to the loss of knowledge and skills if organisations falter because EU funding runs out. In turn, this severely limits the impact that organisations can achieve on the ground. While institutional funding might seem more time-consuming for the EU at the start, it allows civil society organisations to build up long-term structures and therefore achieve greater impact over time. In addition, public funding should be reliable, especially when civil society organisations perform such crucial functions for democracy – it should not be seen as ‘nice to have’ in addition to more reliable funding from public authorities or the private sector.

6. The EU should ensure that the money goes towards capacity-building to enable civil society actors to expand their skills and knowledge in areas relevant for their project work. EU funding should also ensure that it helps build a sustainable civic ecosystem and contributes to the financial stability of civil society organisations. According to a study based on focus group discussions with CSOs in Ukraine, mentoring and capacity-building in project and financial management are the most sought-after skills, as well as communication, advocacy, and strategic planning. Training formats such as webinars and lectures are less in demand compared with practical training ‘in the field’.⁶

7. The EU should consider strengthening partnerships among CSOs in Ukraine, as well as with CSOs in neighbouring countries, especially those in which diaspora communities are active. This would not only help rebuild Ukraine’s civil society sector, which has suffered from the Russian war, and help refugees maintain links with their home country. It would also strengthen transnational networks and therefore contribute to the establishment of a truly European civil society ecosystem (Eastern Partnership Civil Society Forum, 2020). For instance, the EU could strengthen networks of think tanks in the

While the EU has failed to sufficiently support civil society within EU Member States – a factor that has contributed to ‘democratic backsliding’ – it should not repeat the same errors with candidate countries

regions to allow them to coordinate policy work and analysis. It could also allow local and grassroots organisations to communicate with similar organisations across borders, for instance to improve their financial management and advocacy skills. These partnerships would not be one-sided, as EU-based CSOs would also benefit from the knowledge and skills Ukrainian civil society has accumulated in recent years.

8. The EU should minimise the bureaucratic burdens to access its funding. While efforts have been made in the past, EU funding remains highly bureaucratic compared with private funding. Of course, ensuring accountability and transparency to avoid corruption and fraud is necessary. However, the bureaucracy hinders smaller organisations from accessing the funds, and the time required to navigate the process means CSOs lose valuable time that could be spent on their work. Therefore, the European Commission should simplify the application criteria and the paperwork. EU funding money should not be spent on CSO workers reporting and responding to bureaucratic demands – it should be spent on helping Ukraine get back on its feet. The EU should also show leniency on project outputs in view of the war context: CSO actors may have to interrupt their work to hide in bomb shelters, or they may be unable to work full time due to electricity cuts or lack of childcare. Giving out money for civil society workers to be able to survive under those conditions should be sufficient; making sure that volunteers also can take breaks and recharge their batteries should also be

considered, as the war takes its toll on those who are helping out.

9. The EU should ensure that its support is coordinated with that of other international donors, both public and private, to avoid replication or duplication of already existing funding schemes. This might seem logical; however, this can happen very easily, especially when funding is urgent. Other international donors and private donors focus on various thematic fields and have different funding strategies. However, the EU should not expect others to fund civil society – for instance, the World Bank does not consider civil society support in its loans and grants. At the same time, several private donors have been actively leveraging support to civil society actors. While they do not have the same impact as EU funds, they should be considered as complementing existing programmes.

10. The EU should invest in further research to properly understand the needs of Ukrainian citizens and civil society. To that end, it could support research projects carried out by both think tanks and research institutes. Currently, Ukrainian civil society actors have little or no time to think in the long term, as they are faced with the immediacy of the war and are struggling to meet the most urgent needs. Providing help in terms of research and analysis for them to decide further down the line what strategic direction they would like to pursue would therefore be helpful.⁷ Cooperation with universities and think tanks within the EU could also be of added value in this regard. The EU should also consider expanding its support to the work of organisations abroad which contribute to Ukraine–EU relations and connect the Ukrainian civil society community with EU decision-makers and other international partners (Giuashvili, 2022: 14).

ACKNOWLEDGEMENTS

I would like to thank my interview partners Oleksandra Keudel, Assistant Professor at the Department of Public Policy and Governance at Kyiv School of Economics; Mariya Heletiy, Deputy Chief of Party for the Ukraine civil society sectoral support activity at Ednannia; and Julia Bidenko, researcher at the Zentrum für Osteuropa- und internationale Studien (ZOIS) and member of the expert board International Renaissance Foundation, for their time, helpful advice, and insights. I would also like to thank Martin Muehleck from DG NEAR at the European Commission for insights on EU funding programmes to Ukraine. None of those thanked are responsible for any of the weaknesses

or inaccuracies in the analysis above, which are entirely my responsibility.

NOTES

1. 'Civil society in Ukraine in the conditions of war', analytical report on the results of in-depth interviews with representatives of public organisations', study available in Ukrainian only, to be published in Spring 2023.
2. 'Civil society in Ukraine in the conditions of war: analytical report on the results of in-depth interviews with representatives of public organisations'.
3. Information based on interviews with Ukrainian civil society experts, 2023.
4. Unfortunately, the access to information on the exact funding programmes for Ukraine is fairly restricted and would require research that goes beyond the scope of this policy brief. It would be advisable for the European institutions to make such information easily accessible to the public.
5. Numbers given directly by DG NEAR, European Commission.
6. 'Civil society in Ukraine in the conditions of war: analytical report on the results of in-depth interviews with representatives of public organisations'.
7. Information based on interviews with Ukrainian civil society experts, 2023.

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Section 3

The Land of Opportunity: Underexplored Sectors for Integration

Digital Transformation: Transparent Reconstruction and EU Integration

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<https://doi.org/10.53121/ELFTPS5> • ISSN (print) 2791-3880 • ISSN (online) 2791-3899

ABSTRACT

The reconstruction of Ukraine after the full-scale war is a comprehensive long-term project, and digital tools are essential for ensuring its success. This chapter aims to explore how digital transformation can support transparent and accountable recovery efforts, and why digitisation is also crucial for Ukraine's integration into the European Union (EU). The chapter describes how existing and upcoming e-systems could support the reconstruction process and ensure transparency and why digital transformation is crucial for Ukraine's internal market treatment and accession to the EU. The potential for Ukraine's digital transformation to serve as a model for the EU, particularly in addressing the green and digital transitions, is significant. The EU can support this process through technical assistance projects and by providing Ukraine with access to the EU's digital programmes.

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INTRODUCTION

Ukraine, as one of the largest European states in terms of territory and population, finds itself in a unique position. It is situated between the 'free' or 'partially free' countries of the West and the 'not free' countries of Belarus and Russia (Freedom House, 2022). In recent years, Ukraine has made a clear choice to align itself with the liberal values of the West, which has led to significant transformations in its economy, politics, and public administration. However, this choice has also led to aggression by Russia, which has been using open military force since 2014 to prevent Ukraine's liberalisation and its integration into the European Union (EU) and NATO.

The war between Ukraine and Russia is not just a local conflict; it is an overt attack on the global liberal order and its fundamental principles (Makarychev, 2022). It represents an existential threat to the country's territorial integrity, the nation's right to self-determination, and its citizens' individual freedom. To stop this act of aggression and prevent its repetition, Ukraine needs to do more than just defend itself. The conflict itself did not begin and will not end on the battlefield alone; Ukraine has to focus on effective recovery and completing its path towards full integration into the EU, two processes that are closely intertwined.

The reconstruction of Ukraine will be a generational task of enormous scale where digital tools can play a crucial role in making the process both effective and transparent. Given the extent of the damage and international funding support, reconstruction efforts must be transparent – not just the specific systems but also the functioning of the state overall. This includes the effective implementation of pre-existing e-solutions, as well as the development of new digital systems.

Ukraine has been actively pursuing digital transformation as part of its policy agenda

DIGITAL TECHNOLOGIES CHANGE THE NATURE OF SOCIAL INTERACTIONS AND THE ECONOMY, BOTH IN UKRAINE AND IN THE EU

Digital transformation is clearly an important focus of both the EU's and Ukraine's policy agendas. The European Commission has proclaimed that Europe needs to lead the transition to a healthy planet and a new digital world (EC, 2020a), while the 'twin challenge of the green and the digital transformation' is an approach defined by the European Green Deal (EC, 2020b). In December 2022, the EU established the Digital Decade Policy Programme 2030 (EP, 2022a). It envisaged EU international action structured in line with the pillars of the Digital Decade. The document sets measurable EU digitalisation targets in four areas: skills, infrastructure, business, and public services.

Digital technologies change the ways in which society interacts and the economy functions. This brings both new opportunities (economic growth, e-democracy, greater transparency, etc.) and new kinds of threats (digital dictatorship, digital divide, cyber security threats, misinformation, etc.). According to the European Declaration on Digital Rights and Principles for the Digital Decade (EP, 2023a), '[t]echnology should serve and benefit all people living in the EU and empower them to pursue their aspirations, in full security and respect for their fundamental rights'.

In the light of the potential benefits and risks associated with digital technologies, Ukraine has been actively pursuing digital transformation as part of its policy agenda, with a focus on enhancing transparency, e-governance, and democratic participation. Before the full-scale war, digital transformation was at the top of Ukrainian policy priorities: 'State in a smartphone' was one of Volodymyr Zelenskyy's key goals (Dickinson, 2020). To implement this policy priority, the Ministry of Digital Transformation of Ukraine was established in 2019, headed by the Deputy Prime Minister. This new institutional framework was combined with the

greatest political support possible and the visionary leadership of Mykhailo Fedorov, the youngest minister in Ukrainian history (he was 28 years old when he was appointed), with no previous bureaucratic experience.

Given that digital tools can be used to enhance both liberal democracy and authoritarianism, Ukraine chose the first path, where developments are targeted at strengthening liberal values and agendas. These preconditions brought some significant results:

- The newly created state application Diia was developed to allow digital access to various state-related functions such as official in-app documents (ID card, travel passport, COVID-19 certificate, etc.) and state services (e-signature, social payments, etc.). With its award-winning design, this app leads in app charts with more than 18 million users (Ionan, 2022).
- The state programme 'Internet subvention' delivered fibre broadband coverage to more than 3,000 villages (Ministry of Digital Transformation of Ukraine, n.d.).
- Governmental programmes on radio frequency spectrum reform led to 4G connectivity improvement for more than five million Ukrainians, and 1.7 million receiving a 4G connection for the first time (Jamin, 2020).
- The state educational project Diia.Digital.education, aimed at improving digital skills, has almost two million registered users (osvita.diia.gov.ua, n.d.).
- Diia.city was introduced as a special legal framework for IT tech companies.

Digital products have played an important role during the war as well. Newly introduced functions of the Diia app are used to inform defenders about Russian troop locations, support the army with donations, register damaged property, provide aid to refugees, and so forth (diia.gov.ua, 2022). Other countries have already started to analyse and implement the Diia app experience, including Estonia (Sushon, 2023), a recognised European leader in e-government. These latest Ukrainian government achievements in digital transformation did not come out of nowhere. They were built on the foundation of previous digital success stories, including the procurement system ProZorro (Offerman, 2017), Asset Declarations (UNDP, 2018), and ProZorro.Sale (United Nations, n.d.).

Finally, the fundamental precondition for the digital transformation is the Ukrainian ICT talents who design and improve e-solutions. The Ukrainian tech sector is one of the biggest in Europe in terms of the number of tech specialists, of which it has about 300,000 (IT Ukraine Association, 2022), who are regularly featured in numerous rankings as among the best programmers in the world.

Apart from the wide application of governmental e-solutions, the digital transformation as such is a crucial aspect of Ukraine's EU integration. The Association Agreement provides Ukraine with an opportunity to receive internal market treatment in the digital field. From a broader perspective, Ukraine's digital transformation in the context of EU accession should be viewed from the standpoint of alignment with the EU Digital Decade goals (EP, 2022a). The central elements of this transformation to consider are:

- digital skills (basic and for ICT specialists);
- digital infrastructures (gigabit and mobile 5G networks);
- digital transformation of businesses (access to education and finance);
- digitalisation of public services; and
- cyber security.

Taking into account the challenges Ukraine faces and the preconditions for digital transformation, this could be one of the most promising areas in which to support Ukraine's reconstruction. Ukraine's reconstruction efforts must be aligned with the goals and principles of the EU's twin green and digital transitions.

DIGITAL SOLUTIONS FOR TRANSPARENT RECONSTRUCTION

Europe has not seen a conflict as destructive as Russia's invasion of Ukraine since the Second World War. The reconstruction and recovery needs of Ukraine were estimated, as of 24 February 2023, at about USD 411 billion by the government of Ukraine, the World Bank Group, the European Commission, and the United Nations (EC, 2022a). It is difficult to imagine what the final tally will be. But, as German Chancellor Olaf Scholz stated: 'What is at stake here (is) nothing less than creating a new Marshall Plan for the 21st century. A generational task that must begin now' (Chadwick, 2022).

Transparency will be one of the pillars of the successful reconstruction of Ukraine, as is recognised by various stakeholders:

- At the international level, the Multi-agency Donor Coordination Platform to support Ukraine's repair, recovery, and reconstruction process is to endure coherent, transparent, and accountable support.
- Ukrainian government representatives emphasise the need for transparency and openness of the reconstruction process (Mininfrastructure, 2023).
- Ukrainian civil society, including activists, organisations, and their coalitions, advocate for transparent, open government approaches to reconstruction (e.g. RISE UA, n.d.a; Ukraine Recovery Conference, 2022).

The reconstruction process will have numerous risks, including corruption, lack of transparency, and inefficiency. International support and trust will be crucial for its success, as outlined in the Lugano Declaration (ReliefWeb, 2022) for the Reconstruction of Ukraine. This declaration highlights important guiding principles such as a focus on reform, transparency, accountability, rule of law, and democratic participation. While digital solutions may not be a panacea for all the challenges Ukraine will face in upholding these principles, they can play a vital role in mitigating risks and facilitating transparency. Digital solutions can help address these risks by providing real-time data and insights that enhance transparency and accountability, streamline administrative processes, and reduce opportunities for corruption. Moreover, digital tools can potentially save significant amounts of money by reducing waste and fraud, ensuring that resources are allocated efficiently.

Therefore, building on previous successful digital solutions in Ukraine, the use of digital tools in the reconstruction process can benefit both Ukraine and the EU. In the next part of the chapter, specific digital solutions that can be utilised to address the challenges faced in the reconstruction process will be described. Since recovery efforts will cover almost all areas of life, it is useful to distinguish two types of solutions: reconstruction-specific digital tools and general digital solutions.

Reconstruction-specific digital tools

Ukraine is creating an institutional framework for reconstruction efforts, including the establishment of a new body called the State Agency for Restoration and Infrastructure Development of Ukraine. It was created on the basis of the State Agency for Infrastructure Projects and the State Agency of Motor Roads of Ukraine. Moreover, in

August 2022, a Register of Damaged and Destroyed Property (RDDP) was introduced. It is intended to become the basis for the digital reconstruction of the country. The RDDP is a unified database that will contain information on all residential, transport, and social infrastructure affected by military aggression. Citizens can register damaged and destroyed property with the help of an administrator or electronically via the Diia website (diia.gov.ua, n.d.).

The Ministry for Communities, Territories, and Infrastructure Development of Ukraine is in the process of developing the Digital Reconstruction Management System (DRMS), which will serve as an online platform for implementation of multiple projects across Ukraine. According to Deputy Minister Oleksandra Azarkhina, the DRMS will make it possible to manage every stage of Ukraine's reconstruction projects while providing real-time online information including spending data. The concept is based on the principle of maximum transparency and the publication of open data in accordance with international norms, such as the Open Contracting Data Standard. It is expected to be launched in early 2023 (Dickinson, 2023).

Ukraine has a strong civil society which is involved in the process of shaping and developing digital government solutions. For instance, the RISE UA coalition is advocating that digital systems be a central pillar of managing the reconstruction process. The group participated in the process of developing the architecture and functions of the DRMS. According to their recommendations, the DRMS should eventually cover all the main stages of reconstruction projects, including:

- project initiative and planning;
- public consultation on projects and involvement of communities in their prioritisation;
- project selection and financing, and selection of contractors;
- project implementation;
- payment for works;
- commissioning of the project;
- operational maintenance; and
- operational monitoring and audit based on the results of the project implementation.

The DRMS should allow for the aggregation of data from existing governmental systems (provided a common data structuring standard is used) and serve as a project management system for agencies that do not have their own systems but

Both the Ukrainian government and civil society want the reconstruction management process to be digitised

are responsible for reconstruction (Coalition of Ukrainian NGOs, 2022a).

It is crucial to understand how far this system extends because it could ultimately become the keystone digital system providing transparency on reconstruction efforts. To this end, its source code should be made available under a permissive software licence, and it should publish data according to an open-by-default principle in open data format (machine readable) (Coalition of Ukrainian NGOs, 2022b). The concept of the system is aligned with the vision of Transparency International Ukraine, which also puts electronic systems at the centre of transparency efforts (Transparency International Ukraine, 2022), as well as the transparency and good governance requirements of the Ukraine Rapid Damage and Needs Assessment (World Bank, Government of Ukraine, & European Commission, 2022). Both the Ukrainian government and civil society want the reconstruction management process to be digitised. The core e-systems are being developed with regard for digital transparency principles.

In conclusion, while digitalisation is a crucial element of the reconstruction process in Ukraine, it is important to remember that digital solutions themselves cannot be the goal. Rather, the focus should be on the results they can bring, such as increased transparency, accountability, and efficiency of the process. Thus, while the EU has expressed concerns about the risks associated with reconstruction, specific digital tools can help mitigate these risks and facilitate transparency.

General digital solutions are crucial for transparency

It's hard to find any sector that has not already been damaged by the war. In a way, the whole country will

become one big reconstruction project. Therefore, a broad view of the digital approaches to reconstruction is also needed. Multilateral financial assistance is already a major factor in recovery efforts and for keeping Ukraine functioning. Since the start of the Russian invasion, the EU has committed EUR 28.2 billion of financial support to Ukraine, covering the period until end-2023, and more than EUR 10.2 billion have been disbursed (EP, 2023b). This raises the question of how the digital transformation can help Ukraine function in a more transparent way in general.

Open data as the key to transparency

Transparency does not automatically lead to accountability, but accountability is not possible without transparency. The key to transparency is access to information and the ability to use and analyse it. The best digital means to make public sector information accessible is open data. It is no coincidence that the relevant section in the 'Handbook of Good Practices in the Fight against Corruption' is named 'Transparency & open data' (Directorate-General for Migration and Home Affairs of European Commission, 2023).

Open data means data in a machine-readable open format that can be freely used, re-used, and shared by anyone for any purpose. This allows anyone to build an independent service on such data and analyse it with digital tools, including machine learning, artificial intelligence (AI), and others. Ukraine has advanced legislation on open data which envisages the 'open by default' principle. The above-mentioned state e-services publish open machine-readable data, allowing experts, NGOs, partners, and the media to analyse any aspect of relevant relations. But that's only the tip of the iceberg. Tens of thousands of datasets have been published by governmental institutions at the state Open Data Portal data.gov.ua. Ukrainian practices of opening data were considered to be best practices in Europe (EC, 2022b). Up to seven million Ukrainians were using services based on public sector open data monthly in 2021, and about half a million of them were using anti-corruption-related sources (diia.data.gov.ua, 2021). Open data in the construction sector served as a vital transparency and anti-corruption tool (TAPAS, 2020) and should continue to do so during the reconstruction process.

But, on 24 February 2022, access to the Open Data Portal was completely severed. Access was restored on 1 August 2022, although some valuable datasets are still unavailable. Many NGOs have

responded with demands to restore data availability. The RISE UA coalition claims that '[a]ccountable and transparent reconstruction depends on the availability of open data' and is calling for priority datasets to be reopened (RISE UA, n.d.b). While civil society is demanding that different datasets be made accessible (dostup.pravda.com.ua, 2023), there are still major security risks in place that prevent Ukraine from implementing the 'open by default' principle in full. But it is absolutely clear that transparency in reconstruction efforts will depend on general availability of digital information in open data format.

The intention of opening up access to data aligns with the Open Data Directive (EP, 2022b). The EU could support Ukrainian civil society in its advocacy for digital transparency while providing technical assistance to the government in identifying and hiding only sensitive data.

Before the war, Ukraine implemented some state-of-the-art digital solutions to increase transparency in governmental processes. However, some of these solutions are now partially or entirely defunct. Rather than reinventing the wheel, the focus should be on restoring these previously implemented solutions, which would have an immediate positive impact on transparency. While there is potential for further improvement and adaptation to new challenges, restoring existing solutions is seen as the easiest and most effective first step.

What digital systems are central for state transparency? Public finance is a critical area where transparency is essential, and there are several digital systems that have been implemented in Ukraine to promote openness. However, due to limited access during the conflict, the effectiveness of these systems has been curtailed. For instance, the spending.gov.ua database, which contains information on public payments, contracts, and financial reports, has been partially restricted. Another important digital system is ProZorro, which is an e-procurement platform designed to ensure transparency in government procurement. However, the system has also faced limitations during the conflict which have impacted its effectiveness. Similarly, the e-register of Asset Declarations of Public Officials, which was mandatory for all public officials and was instrumental in fighting corruption, has been paused, and its machine-readable data is currently unavailable.

Due to the ongoing invasion, these and other digital systems are partially or completely non-functioning. This does not support transparency and accountability in state processes, however can

be vital during the wartime, when fast procedures are needed. These systems help to prevent corruption and improve the overall functioning of the state. Therefore, it is crucial that they are all restored during the reconstruction phase. EU support could focus on reasons for putting transparent systems on hold, as long as it maintains a long-term perspective and ensures that these digital solutions can continue to serve the needs of the citizens and the state in the future.

POLITICAL FINANCING TRANSPARENCY: THE MISSING PIECE

Transparency is not an end in itself. It is a tool to reduce corruption, ensure accountability and effectiveness, and, finally, develop better democratic processes. Transparency in political party financing can play a key role in reducing corruption, including preventing politicians being financed by Russia or oligarchs (and preventing the emergence of new oligarchs). As of now there is limited reporting by political parties regarding their budgets. The Latvian digital system Political Party Financing, which is included in the 'Handbook of Good Practices in the Fight against Corruption' (Directorate-General for Migration and Home Affairs of European Commission, 2023), could be taken as an example (KNAB, 2021). Transparent politicians should be responsible for transparent reconstruction, and new digital solutions could become the backbone of political transparency.

EU integration goals: internal market treatment for Ukraine and reaching Digital Decade goals

Digital policy is a crucial component of the EU's overall policy framework. As such, it is essential to focus both on the formal aspects, such as internal market regulations, and on the actual state of digital affairs within a country through alignment with the EU Digital Decade goals.

Providing internal market treatment for Ukraine

The long-term EU integration goal is that Ukraine becomes an EU Member Country and joins the EU digital single market and EU digital transformation policy. Even though Ukraine is not there yet, the success of its digital transformation is an integral part of the integration path. The EU's digital integration priority was reflected in the 2014 Association Agreement between the European Union and Ukraine (EU, 2022). The document provides for the most extensive level of cooperation in selected

sectors including the telecommunications sector – the possibility of mutual internal market treatment – which means there should be no restrictions on the freedom of a Ukrainian entity to provide services on the territory of the EU and vice versa. After Ukraine was granted EU candidate status in June 2022, the process of digital transformation became even more important.

To make this happen, Ukraine must implement a relevant framework for electronic communications (including covering, among others, the independent telecommunications regulator and radio spectrum coordination), electronic commerce, and trust services.

Ukraine has made considerable progress:

1. It has already adopted two key laws in the electronic communications field based on the European Electronic Communications Code (EC, 2023a).
2. The European Commission authorised membership without voting rights for the Ukrainian regulator in the Body of European Regulators for Electronic Communications.
3. A Priority Action Plan has been developed to further integrate Ukraine into the EU single market (BEREC, 2022).

The first EU proposal to grant internal market treatment to Ukraine was in the electronic communications field: the European Commission adopted a proposal to incorporate roaming into the EU–Ukraine Association Agreement. Bringing Ukraine into the EU free roaming area is one of the key actions of the revised Priority Action Plan to further integration into the EU single market. To implement the 'Roam like at home' initiative, additional steps are needed from both the EU and Ukrainian bodies (EC, 2023b).

In general, Ukraine has broadly aligned its legislation on electronic identification and trust services for electronic transactions, and partly on electronic commerce, with the EU *acquis* as listed in the Association Agreement (EC, 2023a). But aligning legislation does not necessarily mean aligning its implementation. The EU could support Ukraine with technical assistance to align practice in place by making the regulator effective and independent, managing the radio spectrum according to the EU *acquis*, bringing adequate consumer protection in the digital field, and so forth.

It is clear that the electronic communications field is the first market where Ukraine and the EU

can implement internal market treatment and demonstrate practical success on its path to EU integration. Ukraine has shown significant progress in implementing the digital part of the Association Agreement, and further steps are clearly set out in the revised Priority Action Plan. Given that internal market treatment of Ukraine in the electronic communications field is a precondition and good example for the further inclusion of Ukraine into the European digital single market, what is actually needed from the EU to achieve this?

Country transformation through searching EU Digital Decade goals

The EU's Digital Decade Policy Programme 2030 has set measurable targets for the EU's digitalisation in four areas: skills, infrastructure, business, and public services. The integration of Ukraine into the EU also includes the alignment of broad digital transformation policies. Additionally, the Green Deal defines the goals for the twin green and digital transformations. To align Ukraine's digital transformation with the EU's policy goals, the country should focus on the four main goals of the Digital Decade as noted above.

Digital skills

The EU aims to have at least 80 per cent of individuals aged 16–74 possessing basic digital skills and to employ at least 20 million ICT specialists by 2030. Before the full-scale war, more than 25,000 students received formal IT degrees from educational institutions in Ukraine each year (IT Ukraine Association, 2022). As mentioned above, there were about 300,000 tech specialists in Ukraine. But keeping ICT specialists in Ukraine is a major challenge for the country due to the migration process of youth and specialists, and deaths caused by the war.

Ukraine needs EU support in efforts to improve digital skills and to attract and retain highly skilled professionals. This could include EU support of ongoing programmes, such as:

- Diia.Digital.education programmes for improving basic digital skills;
- IT Generation, a programme launched by the Ministry of Digital Transformation to facilitate non-formal IT education (it-generation.gov.ua, n.d.); and
- Diia.city, which was introduced as a special legal framework for tech IT companies; among other goals, it should make working in Ukrainian tech

attractive for foreign skilled specialists due to special taxation conditions.

On top of that, the EU could make all relevant EU programmes on digital skills available for Ukraine and Ukrainians.

Digital infrastructures

The EU aims to have 100 per cent coverage with gigabit networks and high-speed mobile coverage, produce at least 20 per cent of semiconductors, and ensure connectivity accessible to all and everywhere in the Union, with available internet access, in order to close the digital divide across the Union. Russia's war against Ukraine is causing severe disruptions to internet connectivity, which is a precondition for the resilience and further development of the digital economy. Ukraine's state programme 'Internet subvention' was designed to increase connectivity by delivering fibre broadband (which is both high speed and energy efficient) to rural areas. The Law of Ukraine on Electronic Communications defines broadband as a universal service, which means the government has powers and obligations to guarantee geographical and financial accessibility of the internet to everyone. Recovery and further development of fibre coverage should be among the key Ukrainian priorities.

Ukraine's digital transformation and recovery depend on the continuing development of 4G coverage, a start to 5G development, and so forth. The Ukrainian government has officially set out a plan to create conditions for the development of 5G in Ukraine (CMU, 2022), but this plan has not yet been implemented. Ukraine needs EU support for broadband development, including to address urgent needs such as recovery of destroyed networks on de-occupied territories, bringing broadband to war refugees and relocated businesses in rural areas, and long-term broadband development projects. One of the best ways to support fibre connectivity is by using proven mechanisms from the 'Internet subvention' programme, which was digital, transparent, and highly competitive.

Ukraine could potentially play a positive role in achieving the EU goal of semiconductor production. The war has had an impact on the global semiconductor production industry. Ukraine is a prime supplier of neon gas, which is required to operate the lasers used in the lithography phase, the heart of semiconductor fabrication (Hong et al., 2022). The role of Ukraine in the future of the semiconductor industry is yet to be considered.

Digital transformation of businesses

The EU has set ambitious goals for businesses in areas such as AI, big data, cloud computing, and digital intensity for small and medium-sized enterprises. Although this goal is broad, there are steps that can be taken to support Ukrainian businesses and workers. One such step would be to provide full access to relevant EU educational, financing, and other programmes. The European Commission has already taken this approach by signing an agreement to associate Ukraine with the Digital Europe Programme. This will enable Ukrainian businesses, organisations, and public administrations to access calls from the programme, which has a budget of EUR 7.5 billion for the 2021–2027 period (digital-strategy.ec.europa.eu, 2022). Additionally, the Horizon Europe work programme for 2023–2024 includes targeted support for Ukraine (EC, 2022c). In February 2023, the EU reaffirmed its commitment to providing ongoing support for projects and programmes in Ukraine (European Council, 2023).

Digitalisation of public services

The EU has also set ambitious targets for the digitalisation of public services, including 100 per cent availability online, 100 per cent of citizens having access to medical records online, and 80 per cent having access to digital IDs. Ukraine shares this vision and has made progress towards these goals, with the Ministry of Digital Transformation working towards 100 per cent online availability of public services, and the Diia app, which provides digital ID accessibility. Electronic health records have also been in use in Ukraine for several years. However, reaching these targets will take time and technical assistance from the EU may be necessary.

Cyber security issues must also be addressed, particularly since Ukraine aspires to become part of the EU digital single market. One of the issues Ukraine and the EU should consider carefully during 5G implementation is the Chinese role in future 5G.

To better measure Ukraine's progress in digital transformation, the EU should include Ukraine in the Digital Economy and Society Index (DESI). Ukraine has the potential to become a trailblazer in the EU's green and digital transitions. The country has a unique opportunity to showcase its capabilities in implementing sustainable and innovative policies that align with the EU's vision of a greener and more digital future. What's more, Ukraine can serve as a testing ground for EU approaches to the green and digital transitions in areas where the EU faces obstacles due to established systems and legacy issues.

Ukraine can serve as a testing ground for EU approaches to the green and digital transitions

With its current budgetary situation, implementing a Green Taxation Reform could be more manageable in Ukraine (BRDO, 2022). By following EU best practices and regulations, as well as adopting cutting-edge digital and policy solutions, Ukraine can become a role model for the rest of the region in a number of fields. To make this happen, Ukraine needs technical, financial, and political support for its digital transformation processes in achieving EU Digital Decade goals.

Embracing digital transformation as part of the country's transparent reconstruction process is crucial to Ukraine's integration in the EU and ultimately to its bright future as a member of the European community. By following EU best practices and regulations, as well as adopting innovative digital and policy solutions, Ukraine can become a beacon of digital transformation progress in the region. This will benefit not only Ukraine but also the EU as a whole. But Ukraine cannot do it on its own – EU support is critical.

RECOMMENDATIONS

1. Support the development of digital systems specifically tailored to managing reconstruction efforts, such as the Register of Damaged and Destroyed Property and Digital Reconstruction Management System. Ensure that these systems adhere to transparent principles and provide open, machine-readable data.
2. Don't reinvent the wheel: advocate for the use of large-scale e-governance solutions that have already been in use and provided transparency in key government spheres, such as ProZorro, e-Declarations, Prozorro.Sale, and others.
3. Support the development of new e-solutions that bring transparency to the root causes of the biggest risks, for example a digital system for political financing transparency.
4. Ensure that open data policies are effectively implemented, with high-value datasets available in machine-readable format for all stakeholders.

Prioritise the release of key datasets to enable effective decision-making.

5. Collaborate with Ukrainian NGOs and their coalitions to guarantee the transparency of e-governance solutions and the availability and quality of published data. Join forces with these organisations to ensure that e-governance solutions are effective and transparent.

6. Support the implementation of the revised Priority Action Plan to provide internal market treatment for Ukrainian telecommunications, ensuring that both formal laws and practices align with the EU *acquis*. Support Ukrainian integration into the digital single market.

7. Grant Ukraine access to EU programmes that support the EU's achievement of its Digital Decade Policy Programme targets in four areas: skills, infrastructure, business, and public services. Support relevant digital transformation programmes of the Ukrainian government.

8. Include Ukraine in the DESI, an important measure of digital transformation.

9. Ensure that Ukraine's digital transformation activities align with the progressive goals of the European Green Deal. See Ukraine's digital reconstruction efforts as an opportunity to implement ambitious approaches for the 'twin challenge of the green and the digital transformation'.

10. Strengthen cooperation and knowledge sharing between Ukraine and the EU. Use Ukraine as a testing ground for EU initiatives and programmes, and allow Ukraine to contribute its best practices, such as digitalising state services.

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The Critical Raw Materials and Batteries Value Chain: A Case Study for Closer Integration

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<https://doi.org/10.53121/ELFTPS5> • ISSN (print) 2791-3880 • ISSN (online) 2791-3899

ABSTRACT

The race for green energy and the digital transition is pushing the European Union to look beyond its borders to secure access to the minerals which enable daily essentials such as smartphones, but also drones, electric vehicles, and space satellites. This chapter aims to provide an overview of the current processes around the planning and development of the future European Union–Ukraine partnership in the field of critical raw materials and batteries, as well as to identify opportunities and risks for striking a balance between environmental and social standards and post-war Ukraine’s green reconstruction investment needs. In this chapter, I recommend future steps to calibrate Ukraine’s interest in its partnership with the EU in the sector.

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INTRODUCTION

The energy crises of winter 2022–2023 taught the European Union (EU) the bitter lesson that a single third country should not be relied upon alone to supply a critical commodity. The near-total reliance on Russian gas sharpened the EU’s objective to eliminate its dependencies, an aim which has spilled over to mineral value chains. Despite popular misconceptions, energy and the digital transition are more materials-intensive than running an economy relying primarily on fossil fuels (Ragonnaud, 2023: 2). Moreover, since Russia became a menace to world peace, with its full-scale invasion of Ukraine, and constant reminders about its possession of nuclear weapons, the EU’s defence industry is now aiming to increase its capacities, implying additional demand for critical raw materials (CRMs).

Climate change is another big battle with far-reaching effects on the whole planet. Arming for this battle means innovating technologies that require minerals which are deposited mainly outside the EU. Winning this battle (or at least postponing failure) means pulling resources and knowledge together so that we stand a chance of continuing to live in the world that we are used to. However, this new sort of synergy brings new asymmetries: countries where the extraction is concentrated bear all the adverse effects of mining on their environment and communities. Meanwhile, countries that manufacture the end-product for their industries gain the largest profits.

In the Ukrainian case, the challenge of uneven benefits from integrated, CRM value chains is complemented by the broader context of Ukraine’s post-war reconstruction. Ukraine is a resource-rich country; it has abundant minerals and metals vital for the EU’s leadership in becoming the first

net-zero continent. At the same time, as a war-torn country, Ukraine needs to consider its reconstruction and ensure that its industries are future-proof, perhaps prioritising its mineral- and metal-intensive defence industry, including domestic manufacturing. The EU CRMs partnership is thus essential for making Ukraine a self-sufficient neighbour. But how can a balance be struck?

This chapter first provides an overview of the current processes taking place around the planning and development of the EU–Ukraine partnership in the field of CRMs and batteries. It then identifies the opportunities and risks involved in striking a balance between environmental and social standards and post-war Ukraine’s green reconstruction investment needs. The chapter ends with recommendations on the next steps required to calibrate Ukraine’s interest in its partnership with the EU in the sector.

CRMs FOR THE EU: SCALING UP AND SPEEDING UP

Fossil fuels, while an engine of economies for decades in Europe and the world, should finally take a back seat due to the damage they have caused to the climate and the environment. The Intergovernmental Panel on Climate Change report issued in March 2023 states that warming will likely exceed 1.5°C during the century (Lee et al., 2023: 10). This concerning scientific forecast makes the green transition a cornerstone for future generations’ survival and calls on us to increase the urgency with which we plan and implement our green policies.

In this context, the European Commission’s Critical Raw Material Regulation proposal, released on 16 March 2023, is of paramount importance (COM, 2023a). There will be no green and digital transition without lithium for batteries, permanent magnets for wind turbines, gallium for semiconductors, and other earth elements indispensable for all industrial value chains (Ibid.). For this reason, the EU calls these materials ‘critical’: they are of vital economic importance for end-use applications and are almost entirely imported from third countries.

The lack of CRM production in the EU has made it structurally dependent and vulnerable to value-chain disruption. Like its previous dependency on Russian fossil fuels, the EU was also dependent on their raw materials (OECD, 2022). Supplies of aluminium, nickel, palladium, and vanadium – indispensable for batteries, electricity transmission lines, and solar photovoltaics – were affected by the Russian invasion of Ukraine (Ibid.: 2). Resource-rich suppliers can ‘exploit and weaponise

such dependencies to their advantage’ in geopolitics (COM, 2023b: 1).

To date, the EU imports 97 per cent of the magnesium it requires, which diverges from the new regulation that proposes not exceeding a 65 per cent dependence on one country for a particular CRM. The looming risk of China using this dependency as leverage in political or economic bargaining is always present. Given that our era is one of ‘permanent crisis’, securing and diversifying CRM value chains will prevent further shocks for industries and economies.

Since 2011, the European Commission has reviewed the CRM list five times to estimate its needs if the EU is to reach its target of climate neutrality by 2050. The estimates sometimes require extraction to be ramped up by 3,500 per cent, as in the case of lithium (Gregoir, 2022). This production scale requires more exploration, more efficiency in extraction, more deposits to extract from, and faster permit procedures for the mining companies in the EU and third countries.

To streamline cooperation with third countries (such as Ukraine), the EU proposes concluding Strategic Partnerships; these are to be complemented by a roadmap and implemented within a ‘Team Europe approach’ (COM, 2023b: 11). Aside from Ukraine, Canada, Kazakhstan, and Namibia have signed ‘partnerships’ with the EU. It has been two years since this procedure of securing a new and diversified supply of CRM has been in place, and only in Canada has it so far resulted in investment.

UKRAINE: UNTAPPED POTENTIAL IN CRMs

As mentioned, the European Commission regularly reviews the CRM list. Ukraine came under the first wave of Strategic Partnerships with the EU following the review of the EU CRM list in 2020, which contained 30 materials. Among the CRMs extracted in Ukraine (see Figure 1), only titanium has a significant global share – 6.4 per cent (Unguru et al., 2022) – with the price per unit much lower than the average unit price of imports (Ibid.: 24). Other CRMs, such as coking coal, natural graphite, gallium, and germanium, have a share in the global market that falls below 1 per cent.

Lithium, one of the important CRMs due to its use in smartphone batteries and computers, is not yet extracted in Ukraine. However, the country does possess untapped lithium fields in the Kirovohrad, Zaporizhzhia, and Donetsk regions – one of the biggest in Europe. Zaporizhzhia and the Donetsk regions, and Ukrainian territories in the south and

FIGURE 1: Strategic and CRMs in Ukraine

Strategic and Critical Raw Materials



Source: *Ukraine Investment Opportunities in Exploration & Production: Strategic and Critical Raw Materials*, a presentation by the State Geologic and Subsoil Survey of Ukraine.

east, have been partially and temporarily occupied by Russian troops following the full-scale invasion of Ukraine.

On the request of the *Washington Post*, a Canadian geopolitical risk firm, SecDev, conducted an analysis estimating the losses of the mining sector in Ukraine from the Russian invasion. By the summer of 2022, in addition to 63 per cent of the country's coal deposits, 11 per cent of oil deposits, and 20 per cent of natural gas deposits, Russia had seized 42 per cent of Ukrainian metals and 33 per cent of rare earths and other critical minerals, including lithium (Faiola and Bennett, 2022). As matters currently stands, experts agree that Russia would benefit from occupying these territories (Fant, 2022).

CRM policy in Ukraine, though, had climbed up high on the agenda a year before the Russian invasion. In 2021, the National Security and Defence Council of Ukraine ruled that mineral deposits of strategic importance for the sustainable development of the economy and defence capability of the state should be identified (The National Security and Defence Council of Ukraine, 2021). In the document, the state authorities were tasked with establishing a full cycle of titanium processing in Ukraine and assessing lithium ore reserves.

A year later, on 14 February 2023, keeping investors' interest high despite the war, the Cabinet of Ministers of Ukraine approved a list of mineral deposits of strategic importance for the state's

defence and sustainable development (Ministry of Economy of Ukraine, 2023). The list includes five minerals: vanadium, lithium, titanium, uranium ores, and potassium salt. These are also included in the CRM lists of the EU and the United States. The government envisages that production-sharing agreements may be concluded for these deposits.

According to production-sharing agreement law, the state entrusts an investor with prospecting, exploring, and producing mineral resources for a certain period. In turn, the investor operates at its own expense and risk, with subsequent reimbursement of expenses and remuneration as a portion of profitable production. To facilitate production-sharing agreements, the Ukrainian Geological Survey, a national upstream regulator, developed its Investment Atlas for investors to familiarise themselves with the CRMs and strategic raw material deposits.

Yet subsoil use reform, entering into force on 28 March 2023, omitted the topic of CRM, though it took a step towards increasing the investment attractiveness of the national upstream industry by digitalising the licensing procedure and shortening the administrative timeline to five months before work could start at a site. Though the previous political commitment was to allow geological studies for foreign investors, the newly amended law restricts this type of activity to ensure that it is conducted exclusively from the state budget.

THE EU–UKRAINE PARTNERSHIP ON CRMs: A WIN-WIN SITUATION?

On 13 July 2021, Ukraine and the EU signed a memorandum of understanding on a Strategic Partnership on CRM and batteries (Memorandum of Understanding between the European Union and Ukraine on a Strategic Partnership on Raw Materials, 2021). The document exemplifies supplier–buyer relationships in which the EU’s interest is to strike a new deal with a resource country; this deal will integrate a new supply chain, leading to the end-product being manufactured in the EU. Meanwhile, for Ukraine, it is an opportunity to improve its mining standards and receive new investment to explore deposits that have not been properly reviewed since Soviet times.

As the partnership with the EU was interpreted as a good sign for investors, Ukraine started to attract attention on account of its lithium deposits. In 2022, two companies – the Australian company European Lithium and the Chinese company Chengxin Lithium – tried to secure the rights to two promising lithium deposits, one in Donetsk (eastern Ukraine) and the other in Kirovograd (central Ukraine) regions. For the Chinese company, striking a deal would mean winning its first deposit in Europe (Fant, 2022).

On 17 November 2022, in the ninth month of the full-scale Russian war on Ukraine, the European Bank of Reconstruction and Development (EBRD) and the Ukrainian Geological Survey, the national upstream regulator, signed a Memorandum of Understanding aimed at facilitating the modernisation of geodata management in Ukraine and improving access for investors. According to the memorandum, the sides committed to digitalising half of the geological reports and developing an IT management system in English (Ukrainian Geological Survey, 2022).

Neither the EU nor the EBRD agreement mentions an end-use product being produced in Ukraine due to the partnership. As stated in the memorandum, ‘activities along the entire value chain of both primary and secondary raw materials and batteries’ will be included; there are no other stages in the value chain aside from ‘geological and mining exploration, deposit identification and assessment, extraction, refining/processing, transport and monitoring’ (Memorandum of Understanding between the European Union and Ukraine on a Strategic Partnership on Raw Materials, 2021).

Without further clarification, it is reasonable to assume that Ukraine’s status in this partnership could be reduced that of a resource country. This is precisely why Ukraine’s Recovery Plan

should explicitly elaborate on this topic in future iterations and in terms of the official EU–Ukraine dialogue. The Ukrainian Geological Survey envisions as a first step CRM mining as contributing to Ukraine’s strategic autonomy (Ukrainian Geological Survey, n.d.: 2) and CRM as ‘not only sustainable and environmentally friendly but also set to create end-user products’ (Ukrainian Geological Survey, 2023).

Essentially, the EU’s agenda in Ukraine builds on its previous experience of partnering with resource-rich countries from the Global South that are gradually falling under Chinese influence. As a result, the EU is being forced to change its tactics from off-shoring – moving economic activities to overseas regions where labour is cheaper and regulations are more flexible – to ‘near-shoring’ or ‘friend-shoring’ – obtaining necessary resources from friendly neighbouring nations (Roles, 2022).

It is still up to Ukraine how to proceed with the concluded agreements. The EU candidate country status for Ukraine will foster only technical sectoral dialogue and the integration of value chains regardless of the economic sector. At the same time, Ukraine’s reconstruction is a chance to set a high bar and mould further partnerships in this direction. There is always an opportunity to pursue Serbia’s example and block CRM exploration because of the adverse environmental or social effects of the mining projects (DW, 2022).

ENVIRONMENTAL AND SOCIAL STANDARDS: STILL A LONG WAY TO GO

The development of CRMs in Ukraine depends as much on European regulation as on its absorption capacity in Ukraine. As an EU candidate country, Ukraine considers the Union a respected authority that sets the bar. Suppose there are concerns about environmental and social standards laid down in the EU’s Critical Raw Material Act proposal – they will be even more aggravated in Ukraine, where harmonisation with EU standards is generally lagging. However, progress in standards can still be reported retrospectively.

It is risky for the EU and Ukraine to pursue a partnership on CRM not underpinned by a solid code on mining and environmental and social impact assessment (ESIA). The Ukrainian government should go further if they want to turn this collaboration into a publicly acknowledged success story. ESIA contains impact mitigation plans relating to the time when the mine is constructed to its end, including a budget to prove implementation. Without ESIA, CRM projects

will not provide the expected outcome for the communities where they are developed.

While the EU Association Agreement gave Ukraine a foothold to integrate into the EU, the country took one step forwards by pledging to comply with the European Green Deal shortly after its release by the European Commission in December 2019. It was the first country among the European Eastern Partnership countries – Moldova, Georgia, and Ukraine – to take the first steps and propose to establish a structured and regular dialogue with the EU on aligning its policies with those of the European Green Deal (Mission of Ukraine to the European Union, 2021).

Against this background, the European Commission called to investigate how this newly proposed angle of cooperation could fall under the already existing framework of the EU–Ukraine Association Agreement. It received a proposal from the Ukrainian government to review the annexes to the agreement covering European Green Deal sectors and ensure that the national and regional development strategies are also synchronised (Deputy Prime Minister's Office for European and Euro-Atlantic Integration of Ukraine, 2020). The further memorandums of understanding relating to hydrogen, synthetic gases, and CRM were inspired by this political alignment.

Despite ambitious political statements to upgrade Ukraine's commitment to the EU's new transformative agenda, the country's implementation track in the energy, environment, and climate sector was not satisfactory. During three consecutive years (2019–2021), the Association Implementation Reports on Ukraine showed little progress in the environmental sector, with occasional attempts to change environmental impact assessment (EIA) law and the 'legal and financial uncertainty of the investment climate' (European Commission, 2019, 2020, and 2022).

EIA was one of the first procedures to fall victim to the Russian war of aggression against Ukraine. Access to the EIA database was restricted to 'prevent any unauthorised actions with the registry information by the aggressor country' (Ministry of Environmental Protection and Natural Resources of Ukraine, 2022). In addition, subsoil users called for a reduction in the timeframe for the EIA during the period of martial law as the war forced changes to the usage of some raw materials due to logistics constraints and altered project emissions, formally constituting grounds for a new EIA.

At the same time, in the European Commission's proposal for a regulation, Chapter 6, dedicated

to Strategic Partnerships, does not provide information on streamlining EIAs, while in the CRM Communication, the language used to describe the environmental and social protection commitment of Strategic Partnership countries is relatively soft. Looking into the timeline proposed for EIA for Strategic Projects – 30 days – one can assume that the EU will encourage EIAs to be carried out as rapidly as possible.

The Extractives Industries Transparency Initiative has been another guiding framework for environmental and social standards, in force in Ukraine since 2013. The platform increased access to extractive data in nine extractive industries (including titanium and manganese) and strengthened dialogue between the central government, local communities, and companies. Other CRMs, including the lithium extractive industry, should be added to the data reports to improve the transparency of future projects on revenue distribution.

As for public engagement in the EIA procedure, some subsoil users noticed that, in practice, communities directly located near the territory of the planned activity needed to take an objective part in the discussions (Geological Investment Group, 2022). Even though the new subsoil use reform will provide digital access to all geological information that is state property, except in cases defined by the law on state secrets and sanctions, this does not automatically mean that public engagement will be more meaningful.

CRMs' ROLE IN UKRAINE'S RECONSTRUCTION: LEAPFROG OR SIMPLE CASH FLOW?

According to the World Bank Group's estimate, a full year of Russian war on Ukraine has resulted in more than US\$135 billion in direct damage, with the loss dominated by commerce and industry (30 per cent of the total loss) (World Bank et al., 2023). To stay afloat, Ukraine needs constant injections into the state budget provided by international financial institutions, the EU, the United States and other G7 countries. Though the focus is on urgent needs, such as macro-financial, military, and humanitarian support, mid- and long-term reconstruction is also on the agenda.

Not having the luxury of solving one problem at a time, Ukraine is fighting Russia in its territories while simultaneously strategising its recovery and rolling out its first early reconstruction projects. The country aims to reinvent its status in the new green European agenda amid energy crises, climate emergency, and the green and digital (twin) transition.

We are currently at a crossroads where the future of EU–Ukraine partnerships on CRMs and batteries will be decided

This is why the defence and recovery work tracks are running in parallel: they signal that Ukraine is determined to win the war instigated by Russia and eventually become an EU Member State.

The post-war reconstruction of Ukraine is a watershed moment for the country. One possible way to look at it is as a potential breakthrough ‘build-back-better’ case, one which can be amplified in other instances where a country has survived a natural disaster or human-made destruction. Since the Lugano conference in June 2021, Ukraine’s Recovery Plan Blueprint has been the main reference document used to track the country’s progress towards its vision of bouncing back from the devastation inflicted by Russia (National Recovery Council, 2022).

Though European integration and sustainable recovery are articulated in the document as guiding principles, the Recovery Plan looks somewhat ‘scattered and seems to provide separate, often competing, projects, rather than a holistic vision of the country’s development’ (Centre for Environmental Initiatives ‘Ecoaction’, 2022). Despite the aspiration to create a low-carbon economy, the energy transition section of the Recovery Plan looks more like a ‘shopping list’ than a feasible strategy. Despite an assumption that CRMs can be seen from the perspective of the green transition, there is no connection between the two in the document.

Instead, one objective is to deregulate and simplify subsoil access and expand Ukraine’s raw materials base. This is a valid approach considering the ever-growing need for post-war reconstruction investments, on the one hand, and the high demand for CRMs on the European and world markets, on the other. To seize this opportunity, Ukraine will need to overcome its lack of technology and incomplete regulatory framework, the result of which has

been a failure to create a domestic market (Better Regulation Delivery Office, 2023: 8).

However, a visionary vacuum exists on the role of CRMs in creating Ukraine-based end-products with high added value, developing a fit-for-purpose labour market, and cultivating consistent and environmentally sound mining standards. In its current formulation, Ukraine’s CRM contribution to post-war recovery will prioritise external needs. This approach may deprive local industries of integrating Ukrainian CRMs into home-based value chains, which arguably should be one of the main tasks of the new post-war economy.

Again, the connection between generating revenues and mining can be established only with a valid code on mining. Both sides should also be cautious about declaring jobs creation as a result of the partnership since only proper modelling based on the value of the minerals, the taxes, and the volume of extraction can give a clear picture of how the CRM mining activities can create a ground for long-term employment and value chains to feed into community development.

Essentially, there needs to be a holistic public policy on CRMs in Ukraine. As identified by BRDO, the EU’s 2020 CRM list, Ukraine’s 2021 list of Minerals of Strategic Importance, and mineral reserves classified by the State Security Service of Ukraine differ (Ibid.: 19). The policy is specific on forbidding Russian beneficiaries to mine in Ukraine throughout the period of martial law (Cabinet of Ministers of Ukraine, 2022) and on keeping Ukraine’s balance of reserves of certain minerals (including, among others, lithium and titanium) a state secret (State Security Service of Ukraine, 2020).

We are currently at a crossroads where the future of EU–Ukraine partnerships on CRMs and batteries will be decided, with multiple scenarios ahead. The first is a scenario in which CRM mining projects are launched with all refined minerals being exported and fed into the EU value chain, with the end-products manufactured there as well. In the second, Ukraine agrees to projects involving at least 50 per cent of the upstream output staying in Ukraine for downstream product manufacturing and recycling.

The third scenario would be a ‘not-in-my-backyard’ course of action with massive strikes against new mining projects and an eventual public veto on becoming a raw material appendage for the EU. Each scenario may materialise at different stages of the EU–Ukraine partnership and manifest in

Recommendations to fine tune the EU–Ukraine partnership on CRM

1. Condition investments within the implementation of the EU–Ukraine partnership on developing a comprehensive regulatory framework for CRMs.
2. Initiate a comprehensive discussion with governmental and non-governmental stakeholders to assess Ukraine's capacity to produce end products from domestic CRMs.
3. Foster meaningful dialogue between national and regional authorities and local civil society organisations concerning environmentally harmful lithium mining in Ukraine.
4. Oversee changes to EIA law in Ukraine to keep environmental and social standards high amid CRM mining developments.
5. Consider launching an intensive learning program on environmental and social impact assessment in mining for Ukrainian civil society and the country's expert community.
6. Provide access to Ukrainian environmental civil society organisations and think tanks to participate in the EU-supported initiatives under EIT RawMaterials.
7. Strongly encourage public participation and scrutiny of every subsequent step of the EU–Ukraine partnership and educate the public about mining projects' environmental and social impact assessment.
8. Establish a large-scale skills partnership on CRMs to prepare Ukrainian specialists for working in the CRM sector.
9. Offer retraining to incentivise relocated Ukrainians to build careers in highly in-demand green professions.
10. Channel the EU–Ukraine CRM partnership through the initiatives dedicated to EU Member States instead of via the Global Gateway initiative due to Ukraine's EU candidate status.

different ways. The critical issues will be contributing to regional economic growth; creating a more inclusive and highly skilled workforce; and developing a societal and governmental interpretation of environmental, social, and governance standards.

The clash between attracting new investments in post-war Ukraine and preserving its interest in producing products with high added value will continue to play out in Ukrainian discourse, with Ukrainian civil society organisations remaining highly alert to the topic. Moving to actual projects will require liberating Ukrainian lands from Russian occupiers since the most promising deposits and sites are located in the east and southeast of Ukraine, which are currently active battle zones.

CONCLUSION

The EU championship of net zero amid the climate emergency, the race for CRMs as an enabler of the twin transitions, and overcoming distorted supply chains with China and Russia put Ukraine in a position of a resource-rich ally, one that is greatly sought after.

The EU's and Ukraine's objectives differ regarding their strategic usage of CRMs. The EU envisions Ukraine as a third country which, together with other third countries, could enable the bloc to strive for leadership in the twin transition, as well as allow

it to achieve strategic autonomy in developing its industries.

While it is open to partnerships due to its hunger for post-war recovery funding, Ukraine may risk reducing itself to the status of a raw materials supplier. The EU–Ukraine CRMs partnership poses advantages while bringing significant risks, and these should be addressed in the Ukraine reconstruction process.

In the race for tangible results, the Ukrainian government will likely speed up unfolding beneficial changes for investors, such as opening and digitalising more data (this has already started following the subsoil reform voted on in December 2022).

However, these developments might unfold at the expense of meaningful EIA and reasonable public involvement. Lowering stringent EIA requirements in the EU may equip the Ukrainian government with more arguments against robust safeguards in the mining sector.

Alternatively, seizing the opportunities of the EU–Ukraine CRM partnership, with its mid- and long-term perspectives, may lay the groundwork for building its end-use applications and the value that can be added by Ukraine's manufacturing sector.

The role of CRMs in Ukraine's reconstruction is crucial, given that it mainly concerns regions entirely or almost destroyed, and with people either internally displaced or relocated to other countries.

To be a positive turning point in Ukraine's reconstruction, the CRM policy development should start with comprehensive public consultations, especially with local and regional governments.

I would like to thank Elise Vigier from GIZ, Olga Polunina from Ecoaction, and CSOs Coalition on Raw Material for providing their valuable comments for the chapter. None of those thanked is responsible for any weaknesses or inaccuracies in the analysis above, which are entirely my responsibility. Disclaimer: the writing of the chapter concluded before 7 April 2023. All changes to EU and Ukrainian legislation in the studied area released after this date did not become a part of the analysis, which therefore might not reflect the situation at the time of its release.

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Integrating European Union and Ukrainian Defence Capabilities: How Not to Miss a Window of Opportunity

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<https://doi.org/10.53121/ELFTPS5> • ISSN (print) 2791-3880 • ISSN (online) 2791-3899

ABSTRACT

Ukraine has undergone several phases of cooperation with the European Union (EU) on security and defence issues since the Revolution of Dignity and the subsequent Russian occupation of Ukrainian territories in Crimea and Donbass in 2014. Going forward, the full-fledged or enhanced participation of Ukraine in the EU's common defence programmes and initiatives may serve as a mutually beneficial investment in the future European security architecture. This chapter describes developments in EU–Ukraine security and defence cooperation starting from the time of the first Russian aggression in 2014 and assesses the progress made in bilateral cooperation along with core defence policies and instruments adopted by the EU. It describes the EU's military-technical cooperation with Ukraine first in the period 2014–2021, then following the full-scale invasion in February 2022.

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DEFENCE COOPERATION INITIATIVES PRIOR TO RUSSIA'S 2022 FULL-SCALE INVASION (2014–2021)

Legal framework for defence cooperation

As a victim of unprovoked Russian aggression, Ukraine sought to transform and solidify its cooperation with the European Union (EU) in order to restore its territorial integrity and sovereignty. Against the backdrop of Russian military hostilities in Ukraine, the parties signed the political part of the Association Agreement (AA) between the EU, its Member States, and Ukraine at an extraordinary EU–Ukraine summit in March 2014. The AA, a comprehensive and overarching document, laid the basic legal framework for bilateral cooperation in the areas of defence and security.

Title II of the AA, 'Political Dialogue and Reform, Political Association, Cooperation, and Convergence in Foreign and Security Policy', mentions the commitment to intensify dialogue and cooperation in areas of conflict prevention, crisis management, and regional stability. This joint activity is aimed at gradual convergence in foreign and security policy, including the Common Security and Defence Policy (CSDP). This chapter of the AA also envisioned military-technological cooperation between the EU and Ukraine. Article 10 explicitly refers to the establishment of institutional cooperation between Ukrainian defence institutions and the European Defence Agency (EDA) to foster military capability improvements (Official Journal of the European Union, 2014).

In 2015, more detailed Ukrainian expectations regarding security and defence cooperation with the EU were outlined in domestic strategic

documents. Specifically, Ukraine sought to rely on the EU in the areas of special training and education of military and security personnel, enhancing military-technological cooperation with EU Member States and European defence industries, effective intelligence sharing, and reform of the state secrets protection system.¹

Since 2021, Ukrainian governmental bodies and the Ukrainian Armed Forces have adhered to the four priorities identified within the framework of the AA and other bilateral and multilateral programmes of the EU. These priorities include expanding dialogue with the EU in military-political, military-technical, and defence areas; practical EU–Ukraine cooperation under the CSDP framework, such as the participation of the Armed Forces of Ukraine in EU civilian and military missions, as well as joining EU battle groups; participation in security-related initiatives of the Eastern Partnership policy (CSDP panels); and diversification of cooperation with the EDA, as well as diplomatic and political efforts to join the projects of the Permanent Structured Cooperation (PESCO) programme (Mission of Ukraine to the EU, 2021).

The progress on some defence and military cooperation issues can be traced through joint statements of the EU–Ukraine summit, which is the highest-level political meeting between the parties. Each year, these statements or official remarks list the main deliverables of bilateral cooperation, prospects, and challenges along the way. While some cooperation areas occasionally appear in the statements, others have been traditionally featured in political declarations on defence and security initiatives.

Typically, the EU was prepared to provide assistance to Ukraine in combating Russian disinformation and countering hybrid threats emanating from Russia. There was also continuous attention devoted to cooperation in the cyber domain. Ukraine maintained the inclusion of topics related to its participation in CSDP missions and the possibility of contributing to EU battle groups on the bilateral agenda.

Cooperation with the EDA

Less frequently, these documents contained references to effective military and defence-related cooperation. For instance, in the joint statement of the 17th EU–Ukraine Summit (2015), the parties welcomed the start of negotiations on the conclusion of the Administrative Arrangement

between the Ministry of Defence (MoD) of Ukraine and the EDA.²

In 2015, Ukrainian MoD and EDA representatives signed the Administrative Arrangement, thus opening possibilities for the MoD to participate in ad hoc EDA projects and initiatives. The agreement established procedures for information exchange and consultations between the parties. For the Ukrainian party, it was crucial to demonstrate a well-founded potential to contribute to EDA projects and initiatives. Four initial areas were selected for potential cooperation: Single European Sky (SES), logistics (including spare parts and airlift), standardisation, and training (including helicopter training) (EDA, 2015).

Ukraine has acknowledged the recent advancements in the EU's defence programmes and military-technological cooperation that have been implemented since the adoption of the EU Global Strategy in 2016. The establishment of the European Defence Fund (EDF) and PESCO were notable developments that caught Kyiv's attention in 2017. As the Russian aggression continued, and the military conflict took on protracted features, the Ukrainian party expressed a deeper interest in collaborating with the EU on defence matters, including under the EDA umbrella.

During the first visit of the EDA's Executive Director to Ukraine (2018), their Ukrainian counterparts expressed interest in extending cooperation to areas such as cyber defence, anti-mine activity, Ukraine's participation in civilian and military CSDP missions, and its potential involvement in PESCO projects.³

In 2020, contacts between the EDA and the Ukrainian MOD intensified. Ukrainian representatives frequently participated in the SES Military Aviation Board. In the same year, the Ukrainian side was allowed to participate in the European Defence Standardisation Committee and several EDA expert task forces, including those on ammunition, life cycle technical documentation, and quality of electric power supply/portable electric power generators. Ukrainian specialists also joined the 'Project Team Logistic Support'. However, despite active consultations and information sharing between the parties, this interaction has not yet resulted in concrete outputs for the Ukrainian defence sector as a result of participation in EDA programmes. Some delays occurred due to COVID-19 disruptions and restrictions on project activities, which decreased the level and dynamics of joint interactions.

Ukraine and PESCO

Unfortunately, Ukraine's bid to participate in projects under the PESCO framework was not very successful. The first PESCO projects were initiated in 2018, covering joint defence and security initiatives in areas such as land, maritime, air, cyber, as well as training and other enablers. This presented unique opportunities to foster collective defence activities among the 25 participating EU Member States. From the outset, Ukraine declared its interest in being a part of this initiative. Through participation in PESCO, Ukraine planned to enhance its military-technological cooperation with the EU and improve its national defence capabilities in line with the best European practices and standards.

However, it took the EU three years to open the PESCO defence projects to third parties. In 2020, the Council of the EU adopted a final decision outlining general terms for the participation of non-EU countries in individual PESCO projects. The entry conditions for this EU defence framework are quite strict. Actual participation in individual PESCO projects would require Ukraine to meet certain political, substantive, and legal preconditions enshrined in the EU Council decision. The applying party, apart from solid legal and technical compliance, has to demonstrate its value-based approach and correspondence to the security and defence interests of the EU. Simultaneously, any potential partner has to demonstrate an added value and complementarity to the project, contributing technical expertise, financial resources, or capabilities (Council of the EU, 2020).

At that time, the Ukrainian authorities demonstrated readiness and interest in joining approximately 20 of the ongoing 47 projects. Ukraine was particularly interested in the military mobility project, which was the most popular in terms of the number of participating states. Another project of great importance was aimed at boosting cyber defence capabilities. Additionally, Ukraine considered participating in projects focused on the development of new platforms for armoured infantry vehicles, among others. In these projects, Ukraine had the potential not only to benefit from new opportunities but also to contribute its own experience, capabilities, and technologies.⁴

In 2020, Ukraine initiated preparatory consultations with its European partners regarding potential entry into several important PESCO projects. Unfortunately, Ukraine was not able to gain access to any of the projects under PESCO. Nonetheless, Ukraine continues to demonstrate its willingness

to join projects under the PESCO framework. In the Joint Statement following the 23rd EU–Ukraine Summit in 2021, the European party noted Ukraine's interest in participating in individual PESCO projects.⁵

Cyber security dialogue

Effective cyber security cooperation has always been a key priority for the EU–Ukraine security partnership. Cyber security has featured prominently in joint statements issued at EU–Ukraine summits, along with countering hybrid threats and combating Russian propaganda. Compared with other areas of security and defence, the EU has been more proactive in forging partnerships with its counterparts in the realm of cyberspace. Despite being unsuccessful in joining PESCO cyber security projects, Ukrainian authorities have found an alternative channel to foster bilateral cyber dialogue.

The EU–Ukraine Dialogue on Cybersecurity was launched in June 2021, providing a platform for discussing joint initiatives and efforts by Ukraine to align with the EU's legal and institutional framework. In addition to cooperation on a global scale within international organisations such as the United Nations, other issues on the agenda included Ukraine's commitment to joining the Second Additional Protocol of the Budapest Convention to enhance cooperation on cyber crime, and measures to boost cyber resilience. Interactions in this area have contributed to enhanced cooperation in repelling Russian cyberattacks on Ukrainian critical infrastructure (Ministry of Foreign Affairs of Ukraine, 2021).

Military cooperation under the European Peace Facility

Ukraine was one of the first beneficiaries of the European Peace Facility (EPF), a new off-budget instrument established in March 2021. The main goal of this fund, directly filled by Member States' contributions in proportion to their gross national income size, is to support the implementation of the CSDP, both through EU-led military missions and by providing support to third states for military and defence-related matters. The EU also seeks to improve interoperability and capabilities of partners for participation in military missions under the CSDP policy.

Given its ongoing conflict with Russia and its contribution to EU-led military missions, Ukraine has demonstrated a strong interest in this instrument from its inception, recognising its political

significance in bolstering military and defence cooperation with the EU. In December 2021, during the second wave of assistance measures, the EU granted Ukraine financial support worth EUR 31 million over a three-year period. This package aimed to boost Ukraine's overall resilience and military capabilities, as well as its preparedness for emergency situations. The funds were earmarked for military medical initiatives, engineering, mobility, and logistics projects. The Ukrainian side also requested financing for cyber-related projects (Council of the EU, 2021). It should also be noted that in 2021 the EU adhered to international practices and rules not to provide lethal military equipment to its partners.

A NEW PHASE IN EU–UKRAINE MILITARY AND DEFENCE COOPERATION SINCE FEBRUARY 2022

In February 2022, cooperation between the EU and Ukraine in the areas of defence and security underwent a drastic transformation. The EU's new framework for support of Ukraine in the military domain has three levels, including military assistance via the EPF, the bilateral track with the majority of Member States, and military training provided under the mandate of the EU Military Assistance Mission in support of Ukraine (EUMAM Ukraine). In 2022, the military assistance provided to Ukraine both on the EU level and that of individual Member States was worth EUR 12 billion.

Ukraine has voiced three priorities for its defence cooperation with the EU. Firstly, the EPF played a significant role in solidifying the EU's involvement in the military support of Ukraine. Facing unprecedented full-scale military aggression, Ukraine made an urgent appeal to the EU and its Member States for assistance with military equipment and ammunition. On 28 February 2022, the Council of the EU adopted decisions on two new assistance measures under the EPF framework, which, for the first time, covered the provision of lethal military equipment, including lethal arms, to the Armed Forces of Ukraine (Official Journal of the European Union, 2022). The Council's decision stated that military assistance to the Ukrainian Armed Forces, provided by the EU Member States since the beginning of 2022, was eligible for funding under the EPF. This tranche amounted to EUR 500 million and became an essential step in helping Ukraine to defend its territory. The operationalisation of these financial resources is done in accordance with the rules under the EPF.

The framework for the full cycle of assistance in line with this instrument foresees several phases. The process is initiated by a request from Ukraine clearly specifying the types of materiel or ammunition required on the Ukrainian battlefield. European External Action Service (EEAS) units process this request and communicate it to the national governments of Member States. After a Member State has delivered the requested equipment to Ukraine from its own national military stockpiles or army reserves, that state may submit a bid to the EEAS for reimbursement from the EPF funds earmarked for Ukraine.

Of crucial importance for Ukraine was the EU's decision to launch the EUMAM Ukraine in November 2022 in response to a Ukrainian request for comprehensive military training for new units of the Ukrainian Armed Forces and other law enforcement agencies to boost their military capacity and resilience. Initially, in November 2022, the plan was to train 15,000 Ukrainian servicemen; however, by the beginning of 2023, EU officials had already decided to double the number of military personnel trained at military training facilities in Germany and Poland up to the end of 2023. This Ukrainian military manpower represents a strategic asset for Ukraine's counteroffensive planned for late spring 2023.⁶

As of March 2023, the financing Ukraine had received under the EPF for security and defence comprised EUR 3.6 billion (in seven tranches) for military equipment and maintenance and repair; EUR 61 million to support the newly established EUMAM Ukraine; and EUR 31 million for medical, de-mining, and engineering equipment, support for ground mobility, and cyber defence (EEAS, 2023).

It must be noted that the scope of financial resources envisaged by the EU for the period 2021–2027 appeared woefully inadequate to cover the military assistance delivered to Ukraine. Of the EPF's initial multiannual budget of EUR 5.7 billion, the EU Council directed EUR 3.7 billion towards military assistance and training for the Ukrainian defence and security sector. In December 2022, given that the EPF is an instrument with global engagement, the Council decided to increase the financial ceiling of the EPF by EUR 2.3 billion. Additional financial needs can be covered in the future with a potential top-up of EUR 3.5 billion.

In March 2023, the Council of the EU supported the decision to operationalise this increase, with the new overall budget now equalling approximately EUR 8 billion until 2027. Some Member States proposed returning to the issue of joint procurement of

Defence and security cooperation between the EU and Ukraine still faces some political limitations and procedural bottlenecks

ammunition, both to assist Ukraine and to replenish their inventories and arsenals. Relying once again on the EPF's financial resources, the launch of joint ammunition procurement for Ukraine's needs may bring to the fore the EDA and the recently established initiative of the Joint Procurement Task Force.

Additionally, it is worth mentioning that Ukraine has maintained intensive cooperation with the EU in the area of cyber defence. In February 2022, Ukraine requested the activation of the Cyber Rapid Response Team (CRRT), a PESCO project led by Lithuania to counter cyber threats from Russia (EDA, 2022). In September 2022, acknowledging the significance of cyber defence cooperation, parties held the second round of the EU–Ukraine Dialogue on Cybersecurity. In 2022 the EU provided EUR 29 million to Ukraine to boost cyber resilience, with EUR 10 million spent on cyber security equipment, software, and other related support and EUR 19 million directed to support resilient digital transformation. Additional support was provided through the EPF (EEAS, 2022).

CONCLUSIONS

Russia's full-scale aggression against Ukraine has prompted the EU to revisit its approach and toolkit to deal with international military conflicts in its neighbourhood. Firstly, European institutions for the first time in history decided to deliver lethal weapons to a third party. Secondly, the EU tried to elaborate an integrated approach to support Ukraine in its fight against Russian aggression. Thirdly, Russia's war against Ukraine has attracted attention to the domestic problems both on the EU and the national level when it comes to European defence cooperation. As a result, some new defence initiatives have been introduced to bridge the gap in joint arms

procurement and the development of European defence industries.

It is important to note, however, that defence and security cooperation between the EU and Ukraine, while it has intensified since the full-scale aggression began in February 2022, still faces some political limitations and procedural bottlenecks that hinder comprehensive and trustful synergies. The Treaty on the EU constrains the EU's ability to finance any expenditures related to military or defence operations from its budget, and the off-budget EPF is inadequate in scope to address the challenges stemming from Russia's war in Ukraine. Keeping pace with filling the EPF's coffers with sufficient financial resources poses a significant challenge for the EU Member States.

Russia's war against Ukraine has also exposed domestic problems within the EU and its Member States. While several EU defence initiatives and programmes aim to boost common defence activities of Member States as well as joint procurement of weapons and ammunition, national military stockpiles are depleted with every new shipment of arms and ammunition to Ukraine. Moreover, the Russian war in Ukraine is ongoing, and Ukrainian requests for ammunition continue to grow incrementally, exacerbating the situation.

This is an opportune time to revisit the EU's overall approach to collaborative defence initiatives. As highlighted in the Strategic Compass of the European Union, partnerships with allies in different parts of the world are crucial for creating a more secure global and regional environment. Given the real contribution Ukraine is making to European stability and security, the experience gained by Ukraine on the battlefield should also be leveraged in this context.

Ukraine, at this juncture, relies heavily on EU support. Thus, among its short-term priorities in cooperation with the EU, Ukraine stresses the delivery of arms and ammunition to Ukraine as the most urgent step. Additionally, Kyiv is interested in an extension of the EPF resources available for EU Member States which support Ukraine militarily. Another short-term priority is the joint production of military ammunition by European and Ukrainian arms producers.⁷

Although it is not yet a matter of public debate, in the medium term it is important for Ukrainian defence industries to be deeply integrated in current EU institutional and financial frameworks oriented towards defence industrial sector cooperation. Being part of the EDF, PESCO, and the

European Defence Investment Programme would enable Ukraine to prepare itself for security and defence sector integration. It should be remembered that by the beginning of 2023 Ukraine had demonstrated a very high level of convergence with the EU *acquis* in foreign, security, and defence policies.⁸ Consequently, deeper defence cooperation may bring Ukraine closer to full-fledged membership in the EU as well as NATO.

POLICY RECOMMENDATIONS

Short-term perspective:

1. EU Member States should reach an agreement on the means and sources of financing the EPF, while taking into consideration the experience gained from the EPF's expenditures during 2022. The current top-ups of the facility are inadequate to cover the basic needs of the Ukrainian Armed Forces for the years 2023–2024 if the war persists.

2. Joint procurement of ammunition by EU Member States could facilitate an entry point for Ukrainian defence industries to join European ammunition producers. Ukrainian defence companies could participate in procurement procedures under the framework of the EDA.

Mid-term perspective:

3. Ukraine should collaborate with EU Member States to generate political will within the EU to enable reliable third partners such as Ukraine to participate in current defence industry programmes.

4. Ukraine is interested in reviewing directions and areas of cooperation with the EDA. Therefore, it is imperative to prepare a new Administrative Arrangement between the EDA and the Ukrainian MoD to extend cooperation to areas of mutual interest.

5. Ukraine should keep PESCO projects on its radar. It is important to include Ukraine as a third partner in this programme. The ongoing war has witnessed Ukraine's growing superiority in a number of military technological areas, adding clear value to European defence initiatives. As such, Kyiv is ready to participate in several ongoing PESCO projects, including those related to cyber defence, military mobility, and others.

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Building Back Better Ukraine's Education System

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<https://doi.org/10.53121/ELFTPS5> • ISSN (print) 2791-3880 • ISSN (online) 2791-3899

ABSTRACT

The Russian invasion of Ukraine dramatically affected the country's education, research, and development. Millions of schoolchildren, teachers, university staff, and researchers were displaced and had to migrate, and their teaching, study, and research were heavily damaged. Since an educated and intelligent population and functional research and development facilities are prerequisites if a country is to sustain its longer-term economic and societal well-being, this chapter provides key ideas and recommendations on policies and instruments to support the country's recovery, coupled with EU integration obligations. It argues that the EU instruments available could be utilised to help Ukraine restore access to education and science, in accordance with best EU practices.

ABOUT THE AUTHOR

Anna Novosad is expert in education policy and a former Minister of Education and Science in Ukraine. As Minister, Anna contributed to and led the comprehensive school reform in Ukraine, as well as being a leader of the higher education funding reform. Currently Anna leads the international charitable foundation savED, which aims to restore access to education in Ukraine upon the devastating consequences of full-scale Russian aggression.

INTRODUCTION

Disruption of access to education was one of the worst consequences of the Russian invasion of Ukraine. Education was still recovering from the learning suspension caused by the COVID-19 pandemic, and so the war hit millions of children, and their parents and educators, especially hard.

According to the United Nations Children's Fund (UNICEF), more than 50 per cent of those who have fled Ukraine are children. In a report on Ukrainian refugee children residing in the EU, the European Commission stated that as of May 2022 there were 528,110 school-age children in Poland, 290,000 in Germany, 70,530 in Czechia, and between 30,000 to 40,000 in Italy, Romania, Spain, and Slovakia.

This chapter stresses the importance of the immediate recovery of access to education in Ukraine, even given the ongoing war. Education is not a supranational policy in the EU and there are few education-related items in the Association Agreement with Ukraine, or within the candidacy status requirements that Ukraine has to comply with in terms of policy and legislative alignment. However, prioritising the restoration of access to education on various levels in Ukraine is one of the core priorities for the EU, other partners, and, of course, Ukraine itself. Education recovery should target better governance of the system, the reduction of inequality, and the enforcement of policies and tools that ensure high quality.

It is of paramount importance to prioritise education and its recovery, while designing various appropriate support packages, as well as to ensure cooperation with the Ukrainian government in its accession process. There are at least two overarching reasons for this. About 90 per cent of Ukrainian refugees are women and children. According to the United Nations High Commissioner for Refugees

(UNHCR) (2022), 87 per cent of migrants are women with children; 65 per cent of these women are of working age (18–59 years old). According to another survey (Центр економічної стратегії, 2023), 59.3 per cent of the respondents had gone abroad with minor children. While safety and security factors are paramount for the refugees if they are to consider a potential return to Ukraine, access to educational services for many will be among the decisive factors. Moreover, human capital losses, and thus economic damage, the result of the disrupted learning, will be devastating in the long term for Ukraine's recovery and prospects for further modernisation: there is a strong link (Hanushek & Woessmann, 2020) between acquired knowledge and skills and future income and prospects on the labour market.

This chapter offers an overview of the education systems status quo before the war, including an overview of the reforms made to make the Ukrainian school education to bring it into line with the best European practices. Ideas to support specific policy issues are suggested to allow Ukraine's education system to draw closer to the principles of the European Education Area.

EDUCATIONAL CONTEXT BEFORE THE RUSSIAN INVASION OF UKRAINE

Until 24 February 2022, almost 14,000 Ukrainian **general secondary schools** had been teaching approximately 4.2 million schoolchildren; approximately 435,000 teachers were employed. (These figures do not include schools in Crimea and parts of the Luhansk and Donetsk regions, areas under temporary occupation since 2014.)

Before 2022, Ukraine's primary and secondary school education was performing moderately in terms of quality, in comparison to the Organisation for Economic Co-operation and Development (OECD) average. According to the Programme for International Student Assessment (PISA) 2018 results (OECD, 2019), 15-year-old students in Ukraine scored below the OECD average in reading, mathematics, and science. The difference was not strongly significant in reading and science, with 74 per cent of Ukrainian students reaching at least Level 2 proficiency in these two fields, compared to OECD averages of 77 per cent and 78 per cent, respectively. Achievement in maths, however, is substantially lower, with 64 per cent of students in Ukraine attaining Level 2 or higher, compared to the OECD average of 76 per cent. PISA, nonetheless, highlighted some positive aspects of the

Ukrainian school system. Eighty-two per cent of Ukrainian students reported that they were satisfied with their lives and schooling (the OECD average was 67 per cent). Sixty-six per cent of students held a 'growth mindset', that is, they believed that they could proactively influence their intelligence. Also, there was little to no gender inequality observed among the 15-year-old students, with girls scoring similarly to boys in mathematics and science.

The most challenging trend for Ukrainian school education has been the large gap between rural and urban schools in terms of their teaching quality. The fact that the population is ageing and that the number of people in the country is falling has been making the issue of the schools' network optimisation more salient. The very modest salaries for teachers have also been discouraging younger and more motivated professionals from entering the profession.

In 2017 Ukraine nationally adopted a comprehensive school reform. Laws on education and on general secondary education launched the so-called New Ukrainian School (NUS) reform, which aimed at modernising Ukrainian schooling. The Ukrainian school education structure incorporated an additional one year of schooling, and thus was aligned with most of the European systems with regards to the duration of studies. NUS introduced radical changes to the school curriculum – new national standards for primary (1st–4th grades) and basic (5th–9th grades) levels of school were adopted by the government and national-scale implementation was rolled out. Notably, the new curricula were developed based on the core principles and approaches of the Common European Framework of Competences.

Vocational education will certainly be one of the drivers of Ukraine's recovery. As of 1 January 2022, there were 694 Vocational Education and Training (VET) schools in Ukraine. The number of students enrolled in VET schools has been declining, amounting to approximately 250,000 students in 2022 (in comparison to more than 315,000 in 2014). As a rule, more than 75 per cent of VET students chose VET schools after the 9th grade and attained a professional qualification. Approximately 80 per cent of the VET school graduates entered the job market in various industries, while the rest continued their studies in the higher educational institutions or entered military service (State Employment Service of Ukraine, 2021).

The lack of a skilled workforce was being felt by various industries even before 2022. Various policies were invoked to deal with the deficit and the quality of qualifications. One of the tools was the introduction of **dual education**. The major problem that vocational education has to solve is the 'hunger for a skilled workforce'. The skilled worker deficit has become more apparent since 2015, when labour migration to the EU intensified. It has forced many companies to improve working conditions, and VET and businesses to take steps towards working in partnership. Prior to the invasion, 217 vocational education institutions (31 per cent of the total) provided dual education for 12,395 students (5 per cent of the total number) (Centre for Economic Policy Research, 2022: 337). Students would combine their theoretical studies at school with internships at companies or plants (accounting for more than 50 per cent of the students' time). War brought a shocking disruption to these emerging public-private partnerships.

In contrast to secondary schools, vocational education had not been comprehensively reformed prior to 2022. While a new VET law has been drafted, it has not been approved by the Parliament. In 2019 the government took an important step towards the alignment of the Ukrainian system with European ones, establishing the National Qualification Agency, which began to align the National Qualification Framework with the European Qualification Framework for Lifelong Learning, in order to ensure smoother recognitions of Ukrainian qualifications overseas and expedite mobility.

The **higher education system** of Ukraine has been characterised by disproportionately large number of higher education institutions (HEIs). While the number of HEIs has grown since independence, the number of students has been steadily decreasing, mostly due to declining demographic trends. Currently, the total number of students is slightly above 1 million. This tendency has led to a substantially higher ratio of HEIs per million people.

Ukraine started higher education reform immediately after the Revolution of Dignity in 2014. After the adoption of new legal measures, Ukrainian universities obtained wide academic and organisational autonomy and were finally enabled to develop and implement their own tailored programmes, and promote mobility and partnerships with business. A crucial element of the quality assurance system was established – the National Agency for the Quality Assurance of Higher

Education (QA Agency). Like many agencies across the EU, the Ukrainian QA Agency is independent of the Ministry of Education and Science (MoES) and is tasked with impartial accreditation of the university programmes. In 2020 the MoES launched a crucial element of the higher education reform – distribution of public funds based on performance indicators, rather than on sheer number of students. These indicators are based on international HEI rankings, the scope of international grants attracted, participation in international collaboration projects such as Erasmus+, Horizon2020 and so on, revenues from research and consultancy services, and indicators of graduate employment rates. Funding reform is especially important now, given the conflict and the problems with budgeting. Making sure that HEIs are incentivised and have the tools to use their financial autonomy for self-sustained functioning is crucial.

The **science sector** has been among the most underfunded strategic sectors in Ukraine during the last decade. In 2020 Ukraine spent only 0.4 per cent of its gross domestic product (GDP) on research and development (R&D). Though the 2016 Law on Scientific and Technological Activity stipulated that state funding on science and research had to reach 1.7 per cent of GDP from 2020, in reality this was never attained. A brain drain of researchers has thus been one of the most acute structural challenges, especially among young scientists. According to National Academy of Sciences (NASU) data, the number of young researchers working at NASU decreased by approximately 25 per cent between 2017 and 2020 (Zagoronyi, 2020). The Global Innovation Index (GII) in 2022 ranked Ukraine 57th among 132 economies according to its innovation capabilities (34th among the 39 economies in Europe) (GII 2022). The GI states that relative to its GDP, Ukraine performs above expectations for its level of development; however, it is still lower than the regional average in Europe among all GI pillars.¹ Ukraine has been deemed as highly specialised in materials sciences and chemistry, engineering, mathematics, physics, and astronomy. In terms of patent activities, the industrialised regions (largely, east and south of the country) were the most active prior to the invasion (European Commission, 2020).

In 2014 Ukraine launched important reforms of the scientific system, laying down preconditions to reform the governance and funding of R&D. Among the most important developments was the establishment and launch of the National

Russia's aggression towards Ukraine has had devastating effects on Ukraine's education

Research Foundation of Ukraine (NRFU), tasked with the introduction of competition-based funding among researchers. The Foundation has transparent procedures that promote meritocracy. In 2020 it launched its first call for proposals and distributed some initial parts of grants in 2021. Following the Russian invasion and the very large increase in defence spending thereafter, NRFU's funding was completely cut off. Ukraine has also been making intensified efforts towards the internationalisation of its R&D, declaring its integration in the European Research Area as its top priority. In 2016–2020 Ukraine was an associated country in the Horizon 2020 programme, as well as in the Euratom programme (2014–2018).

THE CONSEQUENCES OF WAR: THE CURRENT STATE OF AFFAIRS

Russia's aggression towards Ukraine has had devastating effects on Ukraine's education. First and foremost, Ukrainian children have been forced to leave the country in vast numbers with their family members. According to UNICEF, more than 50 per cent of those fleeing Ukraine are children.

According to MoES data, in the 2022/23 academic year 743,460 schoolchildren started their learning in offline mode in Ukraine, 1,732,638 in online mode, and 1,039,782 in a mixed format.

Deliberate missile and artillery bombing of the educational infrastructure has caused enormous damage. According to operational information from the MoES, as of 24 February 2023:

- 1,441 general secondary, out-of-school, and specialised education institutions were damaged, and 261 were destroyed, which constitutes approximately 10 per cent of the entire secondary education network;
- 23 VET institutions were destroyed, and 128 institutions were damaged;
- 167 professional pre-higher and HEIs were damaged, and 24 completely destroyed.

In total, as of 24 February 2023, as a result of shelling and bombing, in total 3,151 educational institutions were damaged, of which 440 were destroyed (including kindergartens and extracurricular schools). In some of the regions the percentages of destroyed educational infrastructure at all educational levels are shocking – 67 per cent in the Donetsk region, 35 per cent in the Luhansk region, 37 per cent in the Kharkiv region, 25 per cent in the Mykolaiv region, and 21 per cent in the Kherson region (MoES, 2023).

According to the Rapid Damage and Needs Assessment of the World Bank (World Bank, 2023) (released in March 2023), the war has caused at least US \$4.4 billion in damage to education institutions across Ukraine. World Bank experts calculated that Ukraine's education sector has sustained at least US \$0.8 billion in other losses, such as decreased tuition collection and additional incurred costs for educational institutions to provide their premises for internally displaced persons.

Russia's aggression also dramatically hit the R&D landscape. According to MoES, as of February 24, 2023, 114 scientific premises have been damaged, including the Kharkiv Institute of Physics and Technology, where a 'neutron source' subcritical nuclear reactor was located. Overall, 38.1 per cent of Ukrainian scientists have been forced to change their place of residence because of the war; 14.7 per cent have gone abroad (UAScience. Reload, 2022).

POST-WAR RECOVERY AND EUROPEAN INTEGRATION: POLICY RECOMMENDATIONS

Reforming education on all levels – one of the largest systems in Ukraine – was an arduous and incremental task before the war. The Russian invasion and its consequences double, if not triple, the challenge. The education sector has to struggle to at least preserve the status quo with regard to access provision, while as the same time plan and implement the changes needed.

There are various tools, programmes, and expertise available to assist Ukraine's recovery while bringing it closer to the EU's and its separate Member States' best practices. A non-exhaustive list of specific education-level recommendations is given below on how the recovery of Ukraine's education system could go hand in hand with the deeper collaboration with the EU and its education-related initiatives and policies.

School education

1. Further supporting the promotion of key competences and basic skills

The integration of the key competences for lifelong learning – those adopted and recommended by the Council of the European Union in 2018 (Official Journal of the European Union 2018) – have already been reflected in the comprehensive school reform in Ukraine that started in 2017 with primary schools. Now, as never before, it is vital for Ukraine to invest more in the attainment of these key competences in order to promote human capital recovery. The EU Commission's vision for the European Education Area in the sphere of school education can certainly work as a guiding instrument for the promotion of the envisaged competences in Ukraine.

In practical terms, the following measures would provide:

- Further assistance to the curriculum modernisation. The ongoing school reform is planned to finish the first cycle and encompass all the grades by 2029. Prior to that, the government has to continue modernising the curriculum and introducing cross-cutting skills and competences, including those from the dedicated detailed European frameworks – on entrepreneurship (EntrComp), sustainability (GreenComp), digital (DigComp), and learning to learn (LifeComp).
- Provision of support to in-service teacher and school manager training on these competences, as well as on wider inclusion.

Relevant example of such a collaboration would be the bilateral cooperation between Finland and Ukraine, with Finland providing support for the school reform implementation. As part of the 'Learning Together' project, Finnish experts have been working closely with their Ukrainian counterparts on the modernisation of the curriculum for primary schools, systemic teacher training, development of respective learning materials of textbooks, and so on.

2. Fighting inequality in access to education

For Ukraine to recover from the consequences of war, it is essential to ensure that all citizens have equal access to high-quality education and lifelong learning. Inequality in access to better education was a huge issue in Ukraine before 24 February 2022. PISA 2018 showed that school students from

the rural areas were approximately 2.5 years (the maximum value) behind their peers from regular schools in larger towns and big cities. The occupation and consequences of the military hostilities of the Russian army hit these vulnerable children even harder. This is especially disturbing since the vast majority of the communities that have suffered from the Russian occupation are in rural areas or small towns. Thus, after liberation, the chances of these students receiving a better education are bleak.

One of the EU's school education initiatives is the strategic framework on Pathway to Schools, which calls upon and helps Member States with the development of policies to ensure better educational outcomes for all learners, to offset the learning loss that occurred during the pandemic, to prevent early school dropout, and so on.

It is essential for Ukraine to benefit from this vast EU expertise. The preparation of a national long-term learning loss recovery programme, including via large-scale additional tutoring services, will certainly be of the main tasks for the government. Recovering the lost learning will be an important factor in the future economic viability of Ukraine.

The EU could help to tackle this challenge by giving Ukraine access to its expertise – for instance, by inviting Ukrainian officials and experts as non-members to the meetings of the working group of the EEA strategic framework on Pathway to Schools, where Member States exchange best practices and tailor effective solutions to their systems. Moreover, opening up wider opportunities to EU funding within Erasmus+, in particular for the support of the Pathway to Schools-related recommendations, would enable Ukraine to be better equipped with expertise and relevant funds for its application.

3. Supporting decentralisation

Managing education is one of the largest responsibilities of the local governments, which were given more responsibilities and duties following the decentralisation reform in Ukraine. Local governments must financially sustain kindergartens and schools and support their quality of operations. Given the massive destruction, renewing access to schooling is a drastic challenge for the local municipalities. Support must be provided – both from the central government and from the international partners – to the war-damaged local communities so that they can retain access to schooling.

VET

Restoring access to VET as well as quickly modernising VET system should be considered a matter of urgency for the recovery of Ukraine's regions. This is true for the current period, while the war is still ongoing, as well as for the reconstruction phase after the war.

The World Bank estimates that the full year of war has resulted in more than US\$135 billion in direct damage to buildings and infrastructure. The most affected sectors have been housing, transport, energy, and agriculture. Total estimated reconstruction and recovery needs exceed US\$411 billion – 2.6 times the actual GDP of Ukraine in 2022. Ukraine's industry was already experiencing a shortage of skilled workers before the war. The need for reconstruction positions VET as probably the most important level of education needed to cope with the consequences of the war. Moreover, the invasion caused an increase in the number of vulnerable people in the labour force in Ukraine. According to the Ministry of Social Policy of Ukraine, there are 4.9 million officially registered internally displaced persons in Ukraine. Moreover, there is a growing number of war veterans, who will have to be integrated into the job market. Article 145 of the TFEU states that effective VET policies are essential in order to achieve the goal of promoting a skilled, trained, and adaptable workforce and to ensure that labour markets are responsive to economic change. For Ukraine, as a country with EU candidate status, a viable VET system is a necessary tool to respond to the drastic changes – social, economic, fiscal, and so on.

Strategic aims and tasks to tackle for Ukraine in the VET system are very similar to those outlined in the EU's vocational education and training policy (Official Journal of the European Union 2020), and thus there is plenty of room for support and mutual best practice exchange.

1. Modernisation of content delivered in the VET system (both for initial training, as well as for adult retraining and upskilling programmes): work on modern educational standards and programmes must be continued in close cooperation with social partners. This process must be supplemented by the independent assessment of acquired learning outcomes via the qualifications assessment centres.

2. Harmonisation of the National Classifier of Occupations with the International Standard Classification of Occupations model: a complete and radical review and update of it is long overdue. An algorithm

for regular reviews of the National Classifier of Occupations, considering the constantly changing skills needed, must be defined and adopted.

3. Reskilling and upskilling of adults should be solidly integrated into the system of VET schools through the introduction of relevant modular curriculum.

4. Career guidance, with a strong VET focus, must be firmly embedded in the general secondary school curriculum and delivered through various soft skills components of a school programme.

Lastly, but most importantly, the institutional capacity of VET training providers must be reformed and strengthened. More financial autonomy must be provided for VET schools. Public funds must be prioritised towards training in skills and occupations most demanded by the labour market. Overarchingly, the VET schools' network must be optimised, to reflect the actual labour market data, the demographics, and the challenge posed by large-scale reconstruction. All this should have a digitalisation aspect as a cross-cutting theme. A new comprehensive law on VET must be adopted to launch the outlined changes.

Some of these needed reforms have been partially tackled with the support of the EU-funded project EU4Skills: Best Skills for Modern Ukraine – a programme that was rolled out in seven pilot regions of Ukraine (Chernivtsi, Lviv, Mykolaiv, Poltava, Rivne, Vinnytsia, and Zaporizhzhia).² Interim and partial results are available – active upskilling of VET teachers was taking place, VET curricula in a number of professions had been updated, new standards had been created, and career guidance had been embedded in the general secondary education curriculum for 5th–9th grades.

It is essential that the EU continues to further support larger and more ambitious changes in the VET sector, coupling it with assistance for the large-scale rehabilitation and reconstruction of modern VET schools.

Higher education

In order to not only revive the war-damaged higher education sector, but also to substantially improve its quality Ukraine will inevitably have to introduce painful but much-needed policies. These policies will have to adhere to the principles of:

- prioritising quality of HEIs, rather than their quantity, and thus avoiding waste of public funds;
- granting further autonomy to HEIs, especially in finance;

- opening competitive and performance-based access to public funds for all types of HEI ownership;
- promoting flexible learning pathways in higher education for students and the wider introduction of shorter cycle programmes relevant to the job market requirements; at the same time, granting wider recognition at HEIs of non-formal learning outcomes of students;
- further strengthening the Quality of Assurance of Higher Education and aligning its algorithms with the best EU practices.

Cooperation between the EU and Ukrainian universities, and wider support to Ukraine's higher education (in Ukraine's capacity as a candidate status country), must be considered as mutually contributing to the recovery and resilience of both the EU and Ukraine. The following actions could promote this:

1. Wider inclusion of Ukraine in the European Universities Initiative – a transnational alliance of European universities.³

Ukraine has shown successful results in the Erasmus+ programme. In 2014–2020 there were 48 Capacity Building for Higher Education projects, involving 115 HEIs from Ukraine, and 121 Jean Monnet projects, while 17,006 transfers of students and staff took place.⁴

Expanding under the ongoing Erasmus+ programme of opportunities for the Ukrainian HEIs to take part in the European University Alliance track would not only promote the faster hands-on exchange of best practices, but could also be a way of retaining a connection with the Ukrainian students who relocated to the European universities for their studies after the invasion.

2. Dedicated programme (separate 'window') and respective funds within the Erasmus+ for Ukrainian universities to support their physical recovery and renovation of damaged educational environment and labs.

3. Joint EU–Ukraine project on the introduction and roll-out of micro-credentials that would be mutually recognisable. In 2022 the Council of the EU adopted a Recommendation on a European approach to micro-credentials for lifelong learning and employability to support the development, implementation, and recognition of micro-credentials across institutions, businesses, sectors, and borders. Considering the number of temporary Ukrainian students and

refugees in EU countries, work on how such micro-credentials could be mutually recognised would incentivise Ukrainian individuals to acquire and improve their knowledge and skills in shorter term programmes with the aim of using them easily in Ukraine.

Science

R&D will be one of the defining factors in Ukraine's long-term economic growth, as well as in its defence capability. Further modernisation of the military and defence industry will require a considerable number of researchers and strong institutions. Moreover, the build back better approach towards Ukraine's comprehensive recovery, in particular implementation of the Green Deal principles and policies, will have to go hand in hand with science-backed solutions. The dire financial situation, displacement, and infrastructure damage affect individual researchers, critically disrupting internal and international research teams' work. The forced movement of Ukrainian students and researchers will most probably be a long-term pattern. Ukraine's EU integration opens a chance to sustain the country's research capabilities and establish its post-war modernisation on the best EU practices. What are the possible ways to do that?

1. Researchers from Ukraine, especially the young, will not face a problem of individual mobility. This, however, if not mitigated, will lead to a continuous, non-reversible brain drain. Arguably, it is much more conducive to support sustainable longer term partnerships between the EU and EU Member States' research institutions and Ukrainian counterparts and individual researchers. A dedicated EU–Ukraine fellowship scheme could be established based on the NRFU, which could support the temporary continuation of the earlier research in EU-based research institutions.

2. Support for the deep and comprehensive European Research Area (ERA) roadmap for Ukraine. In 2016 the EU Commission completed a thorough, in-depth, peer review of the Ukraine's Science and Technology landscape and provided overarching recommendations on how to tackle the fundamental challenges in the system. It is highly advisable to conduct a similar complex and exhaustive review and road map of Ukraine's integration into the ERA. Such a study and roadmap should delineate all the internal instruments, processes, and working groups within the EU that Ukraine must use and access (to the greatest extent possible considering its candidate status).

3. Establishment of a dedicated unit within Ukraine's MoES to support Ukraine's researchers in their application process to the Horizon Europe calls, including by support in partnership searches and grant proposal preparation.

4. In the longer term, financial support to the research infrastructure recovery within the most perspective for Ukraine spheres, particularly those pertaining to the defence sector.

Preserving Ukraine's human capital underlies its recovery in the long term. In order to make this happen, concrete steps in education and science must be taken now, while the war is still ongoing. Making sure that there is access to education and space to retain research will help to keep Ukrainians (at least in 'safer' regions) in the country and provide incentives to the refugees to return. While it is very hard to keep up even with the pre-war status quo, Ukraine cannot allow itself to use the dramatic chance for large-scale reconstruction and recovery to reproduce pre-war obsolete policies and elements of its education and science systems. The build back better principle has to be firmly based on the EU integration and approximation: it has to be put in place now and not wait until the day of Ukraine's victory.

NOTES

1. There are seven GII pillar ranks: knowledge and technology outputs, creative outputs, business sophistication, human capital and research, infrastructure, institutions, market sophistication.
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Ukraine's Emergent Collaborative Democracy and How the EU Can Support It: Learning from the Local Level of Governance

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<https://doi.org/10.53121/ELFTPS5> • ISSN (print) 2791-3880 • ISSN (online) 2791-3899

ABSTRACT

Despite Russia's war of aggression, Ukraine has preserved its statehood. The emergent collaborative trends in Ukraine's young democracy have contributed to such resilience. The four key mechanisms – public engagement, horizontal and vertical coordination in multi-level governance system, and digital technologies – have been fundamental to the emerging trend towards collaborative democracy and its contribution to resilience in the face of multiple war-related crises at the local level. This chapter is based on the findings of two surveys of governance practices of local authorities before and after the full-scale invasion and insights from the study of local anti-corruption policies in the period 2015–2021.

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INTRODUCTION: RESILIENCE AND COLLABORATIVE DEMOCRACY TREND IN UKRAINE

Ukraine has shown remarkable resilience since Russia launched its full-scale invasion on 24 February 2022. The country's resilience is manifested not only in citizens' determination to resist the invasion in various ways – from joining the Armed Forces of Ukraine to volunteering and crowdfunding for the army – but also in the fact that it has sustained its statehood amid the largest war on European soil since the Second World War. Local self-government authorities (LAs) contribute significantly to such resilience. LAs tackle crises of damaged critical infrastructure, organise civilian defences and bomb shelters, and search for solutions for the displaced and unemployed (Romanova, 2022a).

An emergent trend towards *collaborative democracy* appears to be responsible for the state's resilience. Ukraine has an organically developing system of collective self-government, which, unlike representative democracy, relies on networks and partnerships between citizens and the authorities rather than client–service provider relations. This also makes it different from a participatory democracy, in which the government invites citizens to participate in selected aspects of governance, often through predefined procedures (Bussu, 2019: 62–63; Leslie, 2013; Wachhaus, 2017: 207–208).¹ The polycentric nature of networks provides the necessary governance structure for the authorities to mobilise actors with diverse (local) knowledge and resources in order to respond to multiple war-related crises. The ongoing digital transformation provides technical means for networked coordination.

Simultaneously, partnership-oriented rather than client-oriented thinking in collaborative arrangements prevents the centralisation of decision-making, which one might expect in a war. This lends a democratic foundation to Ukraine's crisis response. Note that martial law has limited elections and the movement of people, while the transparency of governmental data has regressed due to security considerations (Ogorodonik, Baliuk, & Onyshchenko, 2023). Nonetheless, collaborative trends in Ukraine's democracy have partially compensated for the (temporary) lack of accountability while providing a cornerstone for more egalitarian and responsive politics.

Three parallel developments since the Revolution of Dignity in 2014 likely contributed to collaborative trends in Ukraine's democracy, especially at the local level. Firstly, since 2015, Ukraine has been implementing decentralisation reform. The municipalities were reorganised into larger units with better prerequisites for efficiency, they gained broad competencies in public service provision, and they increased their fiscal autonomy (Dudley, 2019). The reform empowered local communities to self-organise based on needs and local context and improved citizen trust in local authorities (Arends et al., forthcoming).

Secondly, the participatory turn in local governance has been on the rise (Aasland & Lyska, 2020), while cities have been improving their transparency and open data records in response to the anti-corruption demands of the Euromaidan (Baliuk et al., 2022; see also the contribution by Oksana Huss in this volume). Two cities, Khmelnytskyi and Vinnytsia, received global recognition for their systemic public engagement solutions in 2021 from the Open Government Partnership Local (n.d.). Finally, going beyond open data, the digital transformation has made it more convenient and dignified to receive administrative services.² Geo-information systems and budget dashboards presenting a variety of local data in a comprehensible format has made LAs even more accessible to citizens. LAs have also started using chatbots, social media, and messengers to communicate with residents but also with each other, horizontally.

The European Union (EU) has, in fact, contributed to the trend towards collaborative democracy in Ukraine by supporting decentralisation reform. The flagship program U-LEAD with Europe (Ukraine – Local Empowerment, Accountability, and Development Programme) has invested EUR 186 million since 2016 into scope conditions, the

technical and human capacity of municipalities, and emergency response during the full-scale invasion. Its support for the reform of administrative service provision was truly system-changing. The U-LEAD with Europe supported the construction of administrative service centres (ASCs), as well as the development of a secure data exchange system (Trembita) and an information system for ASCs (Vulyk). Both systems were subsequently transferred to the Ministry of Digital Transformation of Ukraine (U-LEAD with Europe, 2022 & MinRegion, 2022). These capabilities have been indispensable for the remote provision of administrative services to internally displaced persons (IDPs) during the war.

This chapter will first unpack the mechanisms of collaborative democracy which support the war-time resilience of Ukraine at the local level and discuss the need for local authorities to strengthen these mechanisms. It will conclude with a reflection on the role of the EU and the steps it can take to support the trend towards collaborative democracy in Ukraine during its recovery and reconstruction. Findings of two surveys of governance practices of local authorities before and after the full-scale invasion and insights from a study of local anti-corruption policies in the period 2015–2021 inform this chapter.³

MECHANISMS OF COLLABORATIVE DEMOCRACY WHICH SUPPORT UKRAINE'S RESILIENCE: THE VIEW FROM THE HROMADAS

Ukraine's local authorities have developed as participants and coordinators of the emergent collaborative democracy at the local level. They practise collaborative governance, a network-based type of policy coordination that 'engage[s] people constructively across the boundaries of public agencies, levels of government, and/or the public, private and civic spheres in order to carry out a public purpose that could not otherwise be accomplished' (Bussu, 2019: 61). Such a governance mode allows stakeholders to contribute resources and (local) knowledge, thus making solutions more context- and needs-appropriate. It also includes the use of national and international peer networks to locate scarce resources, circulate information, and learn from each other about how to adjust in a crisis. Simultaneously, LAs adhere to principles of democratic governance whereby crisis management decisions are mostly made in legitimate collegial decision-making bodies. These continued functioning already two weeks into the large-scale

war or soon after liberation (Huss & Keudel, 2023b: 18–20). High public trust in LAs during the war reflects public recognition of their community commitments (Ilko Kucheriv Democratic Initiatives Foundation, 2022).

Vertical coordination

An adequate response to a complex crisis in a decentralised state requires sufficient exchange of information and coordination between levels of government (Hegele & Schnabel, 2021). In Ukraine, the exchange of information between military administrations at the regional and district levels and municipalities appears sufficient, while this information contains timely clarifications within the scope of their responsibilities; several ministries (of Digital Transformation, of Education, and of Communities' and Territories' Development) also provide accurate clarifications within their area of competence (Huss & Keudel, 2023b: 23–24). Informal horizontal channels for information exchange have likely contributed to the positive experiences municipalities have had with these entities alongside formal vertical channels. For example, representatives of these entities have attended events hosted by municipal associations to explain their decisions and have communicated directly via social media with networks of local professionals within their competence, thus bypassing the official hierarchy. In a crisis, informality speeds up response time. It may also, however, create chaos and misunderstanding; therefore, it should be considered complementary to official communication channels.

However, coordination between levels of authority requires improvement, as evidenced by survey results. Out of 241 municipalities, in August 2022, over half of the respondents did not perceive any coordination between the central public authorities and LAs. Furthermore, 50 per cent disagreed with the statement that LAs could influence the decisions of central authorities. Finally, only about a third of communities agreed that central authorities respond to their feedback (Huss & Keudel, 2023b: 35). These results probably mean that central authorities coordinate with selected local authorities at best, and the rest of the LAs remain uninformed of the outcomes of this coordination. Feedback loops between LAs and central authorities should be included in the design of the institutional system to avoid distrust arising during the recovery, which could hamper the collective effort.

Ukrainian municipalities have shown a high capacity for peer-to-peer support beyond formal inter-municipal cooperation agreements

Horizontal coordination between LAs in Ukraine and with LAs in other European states

Horizontal coordination between communities in Ukraine and with those abroad has been helpful for humanitarian relief efforts, circulating ideas and knowledge, and coordinating the demand and supply sides to cover the needs of citizens and vulnerable groups. Forms of cooperation have varied. On the one hand, membership in various Ukrainian *associations of local authorities* has been beneficial in responding to war-related crises because associations have provided information and clarifications on legislation and matched communities in need with those willing to help.⁴ Associations' partnerships with international associations of local authorities have provided additional opportunities to match the demand and supply of emergency support and to lay the foundation for more strategic partnerships for recovery.⁵ On the other hand, Ukrainian municipalities have shown a high capacity for *peer-to-peer support* beyond formal inter-municipal cooperation agreements, and there is a tendency towards more peer collaboration. Ukrainian municipalities have helped each other in mitigating the consequences of the destruction of municipal infrastructure, evacuating people from occupied territories, and supplying food and medicine to the municipalities in the areas of hostilities (Decentralisation.gov.ua, 2022b).

Informal professional networks between local public officials have been critical for quickly exchanging information about solutions to similar problems. For example, heads of transport departments have consulted each other's policies on how municipal transport should work during air raids. Cyber security specialists routinely consult with each other in dedicated social media groups.⁶ Some of these networks emerged out of donor-created

communities of practice, such as the example of the U-LEAD with Europe network of educators: members used it to organise the evacuation of children to government-controlled areas.⁷ Such networks – or communities of practice – provide flexible coordination mechanisms without cumbersome central steering. This speeds up the flow of knowledge and resources, while members still rely on their contextual knowledge to select suitable solutions (instead of simply implementing the vision from the centre).

Support from cities and regions abroad has been vital for humanitarian relief during the war. Twin and sister cities, regions, and municipal associations in the EU and beyond have provided food, medicine, means of transport, power generators, and other items to their Ukrainian peers. Strategic cooperation for recovery is already on the agenda (Smahina, 2022). Previous experience in territorial cooperation, including in EU-funded projects, likely increased the chances of wartime collaboration. Indeed, about a third of Ukrainian cities have been involved in twinning contracts across Europe. (Smętkowski et al., 2023: 16, 21).

Personal contacts of LA employees and twinning agreements have often enabled international partnerships. These results suggest that technical solutions such as matching platforms can assist but cannot substitute for personal connection. *Facilitation of inter-municipal networking* and support for communication skills will likely be needed to boost international partnerships for those municipalities in Ukraine that do not have them. Assistance is especially needed for establishing the first personal contacts between municipal officials in Ukraine and the EU. This can be done for mutually beneficial purposes, such as information meetings on EU structural funds and recovery programmes, and may accompany thematic peer exchange until the partnership is considered sustainable. Pre-existing EU-wide networks such as Mayors for Economic Growth could serve as a model.⁸ At the same time, partnership-building measures can be incorporated into thematic recovery programmes, such as Nefco Green Recovery for Ukraine.⁹

Public engagement and LAs as coordinators

In the face of severe threats to security, it is natural to expect local authorities to focus on essential service provision and approach citizens as clients – if they are functioning. The governance practices of Ukrainian local authorities challenge this conception. In addition to protecting the civilian population, they collaborate with non-state stakeholders

to solve war-related crises. In so doing, LAs assume the role of coordinators in local civic resilience networks.

With the full-scale invasion, Ukrainian local authorities deepened and widened their public engagement practice (Huss & Keudel, 2023b: 24–25). Compared with 2021, more LAs now recognise that public engagement can help them handle the complexity of war-related crises and resource shortages and thus respond to critical problems such as internal displacement. They have gradually acknowledged that directly involving affected actors, such as internally displaced citizens and enterprises, in solving integration challenges can deliver contextual solutions, relieve the LA staff, and offer new development opportunities. For example, collaboration with IDPs was fruitful for integrating relocated citizens and businesses in Zhytomyr, resulting in the employment of IT-skilled people for the local authority and the productive engagement of local and relocated businesses.¹⁰ The information and support network ‘I am Mariupol’ was established in several Ukrainian cities; it employs Mariupol residents to help their peers accommodate in host communities (Demchak & Populyakh, 2022).

Against the backdrop of the remarkable self-organisation capacity of Ukrainian society, local authorities have assumed a coordinating role to match the volunteer effort with those in need of support. This has been especially the case for providing humanitarian aid to IDPs and residents, supporting vulnerable social groups, and coordinating assistance to the Ukrainian Armed Forces. For example, in Kopychyntsi in the Ternopil region, the authorities provided the space for thematic volunteer working groups and facilitated their set-up; after that, the groups tackled issues in coordination with the LA (Mayor Kelichavyi, in PONARS Eurasia, 2023).

Entrepreneurs have emerged as prominent partners of local and regional authorities in meeting war-related challenges. Such partnerships mean that (local) entrepreneurs provide resources to the authorities and co-create and co-implement the solutions (Huss & Keudel, 2023b: 26). The types of businesses involved in such partnerships vary from local micro-entrepreneurs and small and medium-sized enterprises to sectoral clusters, and so the solutions vary widely. On the one hand, there have been numerous micro-initiatives by local entrepreneurs, such as ‘social taxis’ provided to residents and displaced citizens, coordinated by the Novoiarychiv hromada council in the Lviv region

Anti-corruption has emerged as a purpose of public engagement during the war

(Decentralisation.gov.ua, 2022a). On the other hand, the Lviv IT Cluster, comprising 260 companies, three key local universities, and the local authority, established 'Victory Projects', one of which has been a comprehensive modernisation of air defence systems in cooperation with Lviv Regional Military Administration (Lviv IT Cluster, n.d.).

Pre-existing participatory practices likely made collaborating with various stakeholders on war-related crises easier because they set the foundations for trust. Trust is a precondition for collaboration (Rapp, 2020). Municipalities have noted that public hearings, public consultations, and participatory budgets – even though no municipality started a new cycle in 2022 – have supported their crisis response. On the one hand, local participatory institutions could be repurposed for wartime needs. For example, Ternopil and Fastiv youth councils, which used to co-create youth policy in the cities, switched to coordinating humanitarian aid, for which their members served as volunteers (Kyiv Agglomeration Association, n.d.). On the other hand, experience in collaborating with stakeholders provides the necessary communication skills and establishes confidence and a collaborative culture that can support emergency response. For example, the participatory budget had a positive impact on public trust in an LA that had introduced it (Volodin, 2019). Moreover, the participatory budget process inadvertently acquainted residents with the workings of LAs, helping the two parties cooperate constructively (Schmäing, 2023).

Local anti-corruption reforms, which induced both transparency and citizen participation, also contributed to constructive communication between authorities, activists, and sometimes businesses. Where civic actors perceived that local authorities were committed to integrity, communication over anti-corruption policies included a search for a collective benefit of good governance, a declaration, and a follow-up on mutual commitments and vetting solutions with relevant

stakeholders. Actors developed mutual horizontal accountability and eventually came to trust each other's commitment to achieving a commonly defined collective benefit (Keudel, Grimes, & Huss, 2023). Constructive communication helped build cross-sectoral collaborative networks, which have been repurposed to respond to wartime crises. Moreover, anti-corruption has emerged as a purpose of public engagement during the war (Huss & Keudel, 2023b: 24), suggesting that LAs remain sensitive to the public demand for integrity. Therefore they are crucial elements in ensuring integrity in the recovery process.

Ukrainian authorities have relied on *platforms and networks to collaborate with their publics* without strict boundaries or entry/exit requirements. Platforms provide for 'a [semi-structured] environment where diverse voices and processes can be accommodated into a larger governing system' (Wachhaus, 2017: 218). For example, the City of Contents platform was set up for communication and collaboration with non-governmental organisations (NGOs) in Vinnytsia, while the Council on Competitiveness in Lviv, consisting primarily of representatives of IT and tourist clusters and local public officials responsible for economic development, supervised the implementation of local economic strategy in the period 2009–2020. The use of flexible platforms differentiates the Ukrainian experience in collaborative governance from that of developed representative democracies, which typically set up formalised participatory processes (e.g. citizen assemblies or mini-publics) or define collaborative governance arrangements in detail (Bussu, 2019: 68ff).

Multi-stakeholder platforms have made collaboration more organic and purposeful for all sides while reducing hierarchy between state and non-state actors. Communication can be sustained because an individual or unit takes on the role of *facilitator* or standard-bearer and plays a key role in sustaining momentum in the communicative process. In regional centres, local urban development agencies (sometimes called 'City Institutes'), donor-funded consultants, and public partnership units may serve as facilitators, while local NGOs have been instrumental in smaller municipalities. The organisational form of a facilitator is less important than the skill set, which can be trained and placed in different organisational forms within an LPA or externally. A skilled facilitator makes the reform process more robust, such that it will continue even if some actors exit the process (Keudel, Grimes, & Huss, 2023: 14).

Digital technologies

E-governance practices have increased LAs' efficiency in public service provision, while tools of e-democracy have opened new communication channels between authorities and residents since the Revolution of Dignity (Huss, 2022). During the full-scale war, *the elements of e-governance have supported public engagement and helped solve pertinent security issues*. For example, municipalities widely report that established public information channels (chatbots, social media presence) support their crisis response (Huss & Keudel, 2023b: 21). LAs have either used the existing public information channels or established new ones to ensure circulation of information in communities. Especially under occupation or in areas of hostilities, timely official information has been crucial to prevent panic.

It is important to note that digital tools, like public engagement practices, have been adjusted to the new situation or modified if necessary. For example, an online map of bomb shelters, which a community developed in line with its practice of publishing geodata, helped reduce panic among residents on 24 February 2022, when the first round of shelling started. 'Smart Village', a solution for rapid data collection and open data publishing, helped with the evacuation. Coupled with Viber and Telegram chats, it smoothed and speeded up coordination even under occupation and helped prevent panic by providing timely information to citizens (Huss & Keudel, 2023b: 30). Thus, availability and established practice were necessary but insufficient for a tool to be useful. It also required the capacity to adjust the tools and practices in a flexible manner.

There is, however, an urgent need for *assistance in e-governance among small communities* given the recent nature of the digital transformation in Ukraine,¹¹ as well as the centrality of digital tools in the institutional framework for recovery (Rise Ukraine, 2022). There is consistent evidence of a lack of data protection policies and e-document systems in municipalities smaller than 100,000 residents (Huss & Keudel, 2023b: 39). These practices support crisis response, but too many municipalities lack them, making municipal records and functioning more vulnerable should a municipality be physically attacked. Municipalities tend to describe their lack of e-governance tools as the result of lack of equipment and resources to buy it. While this is a challenge, part of the issue is that LAs need training in applying data for policy-making. Introducing the

digital project management system for recovery would require massive digitalisation and accompanying data policies to enable municipalities to benefit from donor funding.

RECOMMENDATIONS

The emergent practice of collaborative democracy has contributed to the resilience of Ukrainian statehood amid the full-scale Russian invasion. Local authorities have harnessed Ukrainian society's potential for self-organisation and channelled it to cope with war-related crises via collaborative arrangements. These have been based on a partnership principle between citizens and authorities rather than a client-manager hierarchy characteristic of citizen-state relations in a representative democracy. Informality and the critical role of facilitators have helped sustain trust in collaborative governance arrangements in the case of Ukraine. Networks as underlying structures of collaborative arrangements provide the multi-level governance system with sufficient adaptive qualities to function efficiently in the context of war-related crises and uncertainty.

The challenge of external support to Ukraine's emergent collaborative democracy is that it must simultaneously develop skills for network-based coordination among governmental and non-governmental stakeholders individually and support platforms that can facilitate such coordination. Therefore, all three general actor types – authorities, civil society, and business – should receive capacity and funding support to become established as meaningful contributors to the recovery. The institutional set-up for the recovery process should account for spaces where these actors can meaningfully coordinate at appropriate governance levels.

Specifically for local authorities, it is critical to sustain and enhance their decision-making autonomy on questions of local reconstruction and recovery. This will require direct access to EU funds, and the competencies and skills to use them, by the LAs:

1. Ensure that the *subsidiarity principle is enshrined in the funding lines of the EU*, with significant financial instruments reserved for projects to be decided by the local authorities. While the Lugano Declaration (Ukraine Recovery Conference, 2022) makes a commitment to the engagement of local authorities within multi-stakeholder collaboration in the recovery process, concrete formats are yet to emerge. For example, local authorities, possibly

Local authorities have harnessed Ukrainian society's potential for self-organisation and channelled it to cope with war-related crises

through their associations, could be involved in designing the Rebuild Ukraine Facility and receive their own funding line within it. More short-term recovery needs could be covered by ad hoc grants such as the DG NEAR grant programme for Local Demonstration Initiatives for the members of the Mayors for Economic Growth network (UNDP, 2023).

2. Support the government of Ukraine in further implementation of the *decentralisation reform* and in upholding existing competencies, and delineate competencies between levels of state authority and local self-government.

3. Build LAs' *capacity to navigate EU structural funds*, which are already available to Ukrainian local authorities and those that are part of the EU accession process (European Commission, 2023).¹² This can be done by placing EU information centres or officers at the level of districts or existing EU presence (e.g., the U-LEAD with Europe offices in 24 regions) to support and consult municipalities in accessing EU funding (Myerson, 2023). A positive side effect will be if such office(s) are trained from among the citizens of Ukraine, thus building local knowledge for EU accession. The experience of the online seminar series within the EU Commission-led New European Bauhaus Lab could be worth studying because the training series is curated by a Ukrainian-origin coalition (European Union, 2022). A network of EU assistance coordinators would be necessary at the stage of application for structural funding.

Further assistance will be needed to support scope conditions for collaborative trends in Ukrainian democracy:

4. Ensure that Ukrainian local authorities, possibly through their associations, participate in the

political dialogue at the EU level on recovery and reconstruction and that their feedback is included in the design of funding instruments. This is also crucial to ensure the contextual suitability of funding and technical support to be approved. From this perspective, the European Alliance of Cities and Regions for the Reconstruction of Ukraine, joined by several Ukrainian municipal associations, is a welcome step (European Committee of the Regions, 2022). In preparation for the accession negotiations, additional information support may be needed to facilitate knowledge about Ukrainian self-government among EU stakeholders.

5. The EU could facilitate *network-based collaboration between LAs and the government of Ukraine*, and other central authorities where relevant, for flexible exchange of feedback in emergencies and ensuring the voice of LAs in designing central-level policies that affect LA powers. The facilitation of the Platform on National–Local Dialogue on Open Government in Ukraine by the Congress of Local and Regional Authorities of the Council of Europe is an example of international support of this type (Huss & Keudel, 2023b: 42).

6. In line with the demands of Ukrainian citizens and international donors for the integrity of the recovery process, the EU could provide political backing and technical support for re-instating *access to open data* – allowing for security considerations. Open data was a prerequisite to (local) societal accountability and the emergence of collaborative trends in Ukraine's democracy before the full-scale Russian invasion.

Finally, Ukrainian LAs will need assistance to support the mechanisms of collaborative democracy:

7. The EU should prioritise *territorial cooperation* with Ukrainian municipalities for recovery and reconstruction (Romanova, 2022b). Aside from sufficient funding, support for horizontal partnerships should include communication with Ukrainian authorities about the development advantages of such cooperation, facilitating the first contact between municipal officials,¹³ and involving entrepreneurs and NGOs. The latter groups have so far been underrepresented in territorial cooperation between the EU and Ukraine (Smętkowski et al., 2023: 55–56).

8. When designing recovery programmes, the EU should continue to support collaborative trends in local public participation based on a partnership model instead of a client–service provider model. This can have at least three dimensions.

Firstly, recovery grants can envisage the establishment of *multi-stakeholder platforms* tasked to define relevant local collective benefits (e.g. a vision for socio-economic development, and revitalisation). A complex issue such as local recovery needs all relevant stakeholders – authorities, civil society organisations, businesses, and residents – on board and trusting in each other’s commitments. Regular interaction regarding a defined goal can help build this trust. Secondly, EU donors could support the creation of ‘third places’ where representatives of different social groups can meet, alongside infrastructure and housing reconstruction (Oldenburg & Brisset, 1982). Such places have been instrumental in public engagement in Ukraine, especially for youth mobilisation. And thirdly, coordinators of these cross-sectoral platforms, either institutions or individuals within or outside the LA, should receive on-the-job training in facilitation skills and collaborative project management.

9. Recognise the crucial role of *business in collaborative crisis response*. Changing stakeholder composition – with the increased role of businesses – requires adjustment of institutional set-up to collect their inputs. Pre-existing dialogue platforms with businesses or shared membership in a local industry cluster have helped many municipalities to cope with emergencies. Support for industry clusters and public–private partnerships can facilitate cross-sectoral cooperation with democratic qualities alongside being an economic recovery instrument.

10. Support local authorities in widening *e-governance*, including cyber security and data protection policies. A desirable component in such support is strengthening relevant communities of practice so that LAs become more self-sufficient in implementing e-governance.

NOTES

1. In its previous uses, the term ‘collaborative democracy’ denoted the deliberative nature of collective decision-making (e.g. in Leslie, 2013), sometimes mediated by digital platforms (e.g. Wachhaus, 2017). Although these uses do not specifically refer to partnership as a mutual expectation and networks as modes of coordination, these two aspects are omnipresent in the empirical accounts of collaborative democracy practice.
2. The main tool is Diia (<https://diia.gov.ua/>), a complex digital solution for administrative service provision, available to private individuals and enterprises as a platform and a smartphone application.
3. These are the Baseline Survey of Open Local Government in Ukraine, covering 126 municipalities in June 2021 (Huss & Keudel, 2023a); the Survey on the Needs and Priorities of Local Authorities in Ukraine, covering 241 municipalities in August–September 2022 (Huss & Keudel, 2023b) (both commissioned

by the Congress of Local and Regional Authorities of the Council of Europe and the Association of Ukrainian Cities); and the in-depth case study of the local anti-corruption policies’ elaboration process in the period 2015–2021 in six regional centres of Ukraine (Keudel, Grimes, & Huss, 2023).

4. The associations are the Association of Ukrainian Cities (since 1992, <https://auc.org.ua/>), All-Ukrainian Association of Amalgamated Territorial Communities (since 2016, <https://hromady.org/>), All-Ukrainian Association of Communities (since 2009, <https://communities.org.ua/>), and the Ukrainian Association of District and Regional Councils (since 1992, <https://uaror.org.ua/>).

5. For example, the German Association of Municipalities and the Council of European Municipalities and Regions (CEMR) launched an emergency needs matching platform (<http://www.cities4cities.eu>), supported by the Congress of Local and Regional Authorities of the Council of Europe; SALAR International launched a partnership-support platform called united4Ukraine. By January 2023, the platforms had merged under unitedforua.org and partnered with the Association of Ukrainian Cities and the All-Ukrainian Association of Amalgamated Territorial Communities to facilitate strategic partnerships.

6. Interview, Ternopil, urban.

7. Interview, rural municipality in Chernihiv region.

8. See <https://eum4eg.com/>.

9. See programme description at <https://www.nefco.int/financing-options/green-recovery-ukraine/>.

10. Focus Group, public official from Zhytomyr.

11. For example, the e-portal for the administrative service Diia was launched in 2020, and the Trembita system for interoperability of databases was launched in 2019, is still in the process of implementation, while only 165 public authorities on the national and local levels of governance were connected to the system by 2022 (EU4DigitalUA, 2022).

12. For example, Horizon Europe issued a call associating Ukrainian cities to the climate-neutral and smart cities mission. Yet, considering the complexity of the application form, it will likely be inaccessible to most municipalities beyond several regional centres.

13. Study visits such as that within TAIEX (Technical Assistance and Information Exchange) offering peer-to-peer support from public experts for a short duration (one to five days), aiming at the approximation of EU legislation and sharing best practices, could serve as a model. See <https://eur-lex.europa.eu/EN/legal-content/glossary/taieux-technical-assistance-and-information-exchange.html>.

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In the unprecedented post-February 2022 context, the relations between the EU and Ukraine made a quantum leap into the future, fueled by common challenges and shared values. One year since granting the candidate status to Ukraine, there are more questions than answers on how to proceed forward. The old ways of cooperation are becoming outdated, while the new ones are yet to be invented, established, and solidified. Thus, it is time to outline a more detailed vision for the foreseeable future and reflect on how to make bilateral relations constructive, progressive, and beneficial for both parties.

This Study by the European Liberal Forum covers various aspects of the EU-Ukraine relations from a short- to mid-term perspective, focusing on the interplay between the post-war reconstruction and EU integration processes as well as new domains for cooperation. The lineup of authors and reviewers includes academics, experts, former and current politicians, and officials from both Ukraine and the EU. Intending to outline a joint roadmap for the future, they jointly reflect on how Brussels-designed approaches and policies can be best adopted in the case of Ukraine and provide EU policymakers with recommendations on how to ensure that the cooperation brings tangible results and maximises mutual benefits along the way.

ISBN: 987-2-39067-055-1



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