



Conditions and Contestation: Ukraine on Its Way to EU-Membership

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INTRODUCTION: THE CHALLENGES OF REVIVING ENLARGEMENT POLICY

The European Council's decision on June 23, 2022 to designate Ukraine as an EU candidate country was regarded as a powerful display of solidarity, recognising Ukraine's persistent 'Western' orientation, despite Russian aggression (see the "conflict between democracy and autocracy" by Wiesner in this volume). As the Ukrainian President Zelenskyy framed the war as the fight against the "*most anti-European force*" (Deutsche Welle 2023), the 'rhetorical entrapment' of uniting Europe along liberal values was revived (Schimmelfennig 2001).

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However, this unification along liberal values poses its own challenges.¹ Since Croatia's accession in 2013, the number of candidates has been growing, prompting the EU to recognise that democratic developments are vulnerable to recession (Castillo-Ortiz 2019; Hanley and Vachudova 2018; Scheppele 2013). Consequently, the EU has introduced additional, politically sensitive conditions for candidacy for aspirant countries in the Western Balkans (WB) (Kmezić 2015). The emphasis is on 'fundamentals', which constitute the rule of law, human rights and anti-corruption (Čepo 2020), together with more tangible rewards, such as financial support, but also stricter sanctions for backsliding, such as the freezing of resources and suspension of negotiations. However, this has, to date, provided only limited tangible results.

Amidst protracted accession procedures in the WB, the issue of providing 'realistic' accession prospects for former Eastern Partnership (EaP) countries such as Ukraine and Moldova has forcefully resurfaced with the war in Ukraine. As these countries struggle with major reform necessities predominantly in the fundamentals sector, they seem like typical long-term candidates. However, in the face of Russian aggression and stronger geopolitical competition, the EU has to revive its enlargement policy to remain a credible actor in the region. New models for 'staged accession' have been proposed (Emerson and Blockmans 2022; Emerson et al. 2022) to accommodate both the demands of candidates for visible progress and Member States' concerns over potential negligence of the 'rule of law'. The key question this chapter addresses is not simply how the Russian war against Ukraine has revived the enlargement process, but which dynamics this entails in a situation where the EU strives to defend the rule of law and democracy internally and externally simultaneously, while at the same time having to prove its geopolitical capacities by providing credible accession perspectives.

In the case of Ukraine we hold that in order to understand this early phase of an accession process under the conditions of war, it is necessary to find an approach which is able to capture the tremendous politicisation not only of issue areas (and here in particular the rule of law), but also of time frames for accession and of the scope of support by the EU. We therefore suggest combining the concept of **conditionality from**

¹ The contestation of the EU as a liberal external actor is analysed in detail by the CONLIB-project: Contesting (Il)liberalism: The European Union as a Contested Liberal Actor in the Neighbourhood, FWF Elise Richter Project V892.

EU studies with conceptualisations of **contestation** from International Relations (IR) research. By combining these two analytical perspectives, we aim, on the one hand, to gain more clarity of the procedural side of the accession process (conditionality) and, on the other hand, of the dynamics of this early accession phase (contestation) under the specific circumstances of the ongoing war.

While selecting the Rule of Law as a field of study, we draw on an understanding of norms as being inherently contested and dependent on the contexts of enactment (Wiener and Puetter 2009). This allows us to carve out expectation and perception gaps between EU actors, Ukrainian authorities and Ukrainian society with regard not only to the speed and pathways of the accession process, but also to the depth of integration.

Our empirical focus is on the so-called ‘fundamentals’. The transformation of applicant countries into functioning liberal democracies is crucial for defending EU democracy internally. But can this goal of the defence of ‘democracy and rule of law’ be upheld when geopolitical pressures demand the securing of the EU’s influence in its neighbourhood—and thus meaningful accession perspectives? The European Commission’s opinion on Ukraine’s membership application in June 2022 (European Commission 2022) was predicated on the understanding that further reforms in the area of fundamentals were implemented and it is this point that currently dictates the overall pace of negotiations. One of the remaining concerns is the reform of the judiciary, specifically, the procedures for selecting judges for the Constitutional Court of Ukraine 2023 (European Commission 2023b), which is crucial for the overall consolidation of the rule of law, but as we will see, highly politicised. It is thus an ideal test case for our analytical framework.

CONCEPTUALISING CONDITIONALITY AND CONTESTATION—AN INTEGRATED ANALYTICAL FRAMEWORK

While approximation towards EU standards in the framework of the European Neighbourhood Policy (ENP) sometimes allows for cooperative approaches and joint ownership, alongside a strictly hierarchical rule transfer (Fix et al. 2019; Lavenex and Schimmelfennig 2013; Korosteleva 2012; Korosteleva 2011), candidate status comes with strict conditionality. The literature on EU conditionality provides us with a helpful

understanding of factors conducive to the transformation of a candidate country along EU conditions (e.g. clarity, tangibility of rewards, absence of veto-players). Within these lines of analysis (as we will show in the next section), Ukraine makes an ideal candidate country. However, to comprehensively understand ‘membership politics’, it is also essential to address the contextual interpretation of the norms posed by the EU as part of its accession conditionality. This requires a shift from a unidirectional norm-giver/norm-taker perspective closely assigned to conditionality approaches, to a broader perspective. Hence, combining conditionality with contestation also allows us to capture the impact of multiple actor-constellations and strategic alliances, as well as the variety of mutual demands. Furthermore, contestation adds a bottom-up perspective to the largely top-down oriented conditionality approach. It is therefore indispensable to conceptualise and address contestation in order to understand the key challenges of placing democratic values on the EU’s accession agenda—under not only increased geopolitical pressure, but while a war is raging on the EU’s doorstep.

Conditionality as a Still-Prevalent Mechanism of EU Enlargement²

The patterns of conditionality established by the EU for the Eastern enlargement in 2004 were the most comprehensive in history (Grabbe 2002). Concurrently, the effectiveness of this conditionality has been theorised, differentiating at the most basic level, between positive (carrots) and negative (sticks) conditionality by providing incentives for change (rewards) and threatening with sanctions (withholding benefits) (Gateva 2015; Schimmelfennig and Scholtz 2008). Theories trying to explain the impact of conditions on national contexts of applicant states put emphasis on either a) the strategic calculation logic of actors involved; b) the process of socialisation (internalisation) of EU rules; or c) the added-value of EU rules for the solution of domestic problems (Schimmelfennig and Sedelmeier 2005; Zhelyazkova et al. 2019).

The External Incentives Model draws on the understanding of rationalist bargaining, “which is actor-centred and based on a logic of consequences” (Schimmelfennig and Sedelmeier 2005, 2020). The outcome of bargaining processes depends on the relative bargaining power of the

² We thank Per Christian Thomsen for his helpful support in this part.

actors involved. Applying this model to the context of the Europeanisation of Central and Eastern European Countries (CEECs), Schimmelfennig and Sedelmeier (2005) hold that the effectiveness of EU conditionality considerably depends not only on the clarity, tangibility and credibility of rewards, but equally on either the absence of veto players in the national decision-making context or on the influence of third (intervening) actors. Target governments weigh domestic costs against the benefits of compliance with EU rules. Conditionality in the absence of an accession perspective (as in the case of the ENP) has thus only a limited effect (Kelley 2006), there being a substantial gap between the expectations of the EaP countries and the integration offers of the EU (Delcour and Wolczuk 2021; Sydoruk and Tyshchenko 2018; Wolczuk et al. 2017). The credibility of EU rewards is essential for “overcoming considerable domestic costs in the pre-accession periods” (Schimmelfennig and Sedelmeier 2020).

The constructivist Social Learning Model conceptualises actors as a community of norms and values. “[W]hether a non-member state adopts EU rules depends on the degree to which it regards EU rules and its demands for rule adoption as appropriate in terms of the collective identity, values and norms” (Schimmelfennig and Sedelmeier 2005). The process itself becomes more relevant as conditionality shapes perceptions and interest (Hughes et al. 2004), so allowing opportunities and access for Civil Society Organisations (CSO) (Halpin and Fraussen 2017; Vidačak 2021).

The Lesson-Drawing Model puts emphasis on EU rules as being ‘effective remedies’ to domestic challenges. Hence, here it is less about the considerations of EU rewards for rule adoption and more about the responses to domestic dissatisfaction with the status quo (Schimmelfennig and Sedelmeier 2005).

Despite their conceptual differences, these models address one key question: is it possible to establish conditions that are conducive to a profound transformation of candidate countries according to EU standards and prescriptions?

According to all three models, Ukraine seems like the perfect accession and transformation candidate. The renewed emphasis of the ‘geopolitical’ EU on enlargement strengthens the credibility of the promise, and the new methodology contributes to clarity and increases (tangible) rewards along the way. There seems to be a broad (elite and social) consensus in Ukraine, and an active civil society puts pressure on political elites

to continue on their European path. Thus, European values and norms resonate with a Ukrainian society, whose belief in democracy and demand for transparency has been considerably strengthened following the Revolution of Dignity and the presidential elections of 2019, which was proof of an ordered change of power (Onuch 2022). Additionally, the close linkage of EU accession with reconstruction plans (Becker et al. 2022) for Ukraine makes successful EU integration an effective remedy for domestic challenges.

However, in all models of conditionality, we discern a problem with the assumption of the EU as being a monolithic actor with an uncontested content of EU-wide rules, independent of context. Not only is enlargement highly contested among EU Member States, on whose unanimous support any accession progress depends (Kochenov 2008), but also the EU's self-perception of being entirely 'objective', treating all countries and issues equally, has been questioned. Mechanisms of compromise are integral parts of conditionality in assessing whether, and how, standards set by the EU have been fulfilled (Hughes et al. 2005; Sasse 2008; Schimmelfennig 2008). The war and the geopolitical pressures arising from it (on both Ukraine and the EU) adds additional highly politicised levers for strategic actors on both sides. Approaches to 'norm contestation' in IR research provide us with an innovative lens with which to study the contestation of EU conditionality.

Contestation as a Second Analytical Pillar

"All normative structures generate disputes" (Sandholtz 2008), emerging "from the fact that norm application and implementation is reviewed and discussed in the domestic context" (Wiener and Puetter 2009). This is true for EU norms as well. Contestation is defined as a "social practice [that] entails objection to specific issues that matter to people" (Wiener 2014). Norms can be contested at several levels. Wiener (2014, 2017) differentiates between the contestation of fundamental norms (e.g. rule of law), organisational principles (e.g. rule of law mechanisms) and standardised procedures or regulations (e.g. specific rule of law implementation). The latter (Type 3 norms in Wiener's conceptualisation) generate little moral objection but are likely 'to contravene individual interests at the implementation stage' (Wiener 2014) of an international treaty. The focus on norm contestation provides an opportunity to move beyond centring on the aptness of local conditions for norm adoption and towards an

understanding of how the meaning of norms is constituted in given contexts (Tholens and Groß 2015) as they resonate with local beliefs, norms and societal demands. Although a formal agreement has been concluded, norms remain to be ‘validated’ in domestic contexts (Wiener 2008; Niemann and Schillinger 2017). Ukraine’s accession process to the EU is guided at the current stage by both the Conclusions of the European Council on Ukraine’s membership on June 2 and 3, 2022 (including the conditions specified in the Commission’s opinion on membership application of Ukraine), and by the DCFTA/Association Agreement. Although the ‘rule of law’ provisions touch upon fundamental norms, we do not expect much of contestation at this level, based on the public and mutual assurance of “Ukraine belonging to the European family” (Ursula von der Leyen, Twitter, 8.8.2022; Volodymyr Zelenskyy, 2023) and on previous studies on the Eastern Partnership (EaP) showing Ukraine’s irreversible civilisational European decision (Vieira 2021). Nevertheless, conditionality transposes these common values into tangible demands for Ukraine to transform its political and legal system, leading us to observe applicatory contestation. Applicatory contestation does not question the moral core of a norm but emerges around the question of whether a norm is appropriate for a given situation, which actions are required for norm implementation and which norm is to be prioritised if several norms apply (Deitelhoff and Zimmermann 2020). Despite Ukraine’s eagerness to join the Union, the EU has acknowledged the fulfilment of its conditionality as a prerequisite for becoming a member, while continually emphasising its unprecedented solidarity and support for Ukraine. Still, different interpretations are possible as to what comprises full compliance, and the time frames for accession might also turn out to be contentious. Hansen-Magnussen et al. (2020) point us to the Janus-faced quality of contestation: while being a virtue for clarifying the norm content (and thus an opportunity for rule acceptance), it seems to be a vice for achieving compliance (as compliance means overcoming contestation). Contestation is not necessarily always voiced, and indirect (behavioural) contestation often leads to ineffective implementation mechanisms (Stimmer and Wisken 2019). For the WB candidates, studies have shown different levels of ‘implicit contestation’ (Hasić et al. 2020). We may also encounter similar practices in Ukraine with regard to the implementation of the Association Agreement, but these practices are visible over a longer period, whereas our focus here is on the short term,

during the early candidate status phase. Therefore, we restrict our analysis to explicitly voiced contestation.

As summarised by Thevenin et al. (2020), the modes of contestation emerge from the variety of actors engaging in the contestation, the levels of contestation and the substance. This broadens the view to include the multiplicity of stakeholders and their potential to engage with and contest norms (Wiener 2022), thereby making these newer debates in IR also relevant for studying EU foreign policy. Neither the EU nor Ukraine is a monolithic actor. The internal contestation of European Foreign Policy—and in this vein, also accession—has grown because of increased politicisation of this policy area (Barbé and Morillas 2019). We also expect to find diverse approaches to EU demands within Ukraine. To analyse the contestation of conditionality in the Ukrainian accession process, we propose the concept of a field of contestation, where contestation is not to be understood as Ukrainian resistance to particular aspects of EU rules but as a web of interaction between different actors engaging with norms based on their social context. By approaching norm contestation as a constitutive feature of the accession process and by having a more context-sensitive approach to reforms (Webb 2018, 414), we speak to a broader literature on the ‘contestedness’ of the EU in its foreign relations (Johansson-Nogués et al. 2019; Müller et al. 2021; Del Sarto and Tholens 2020; Niemann and Hoffmann 2019).

Contesting Pathways of Enlargement Conditionality

Anghel and Jones understand the enlargement process as a series of imperfect solutions to problems along the way (Anghel and Jones 2022). This relates perfectly to our conjecture that despite the good faith and determination of both sides to move forward in the accession process, contestation arises and will probably require ad hoc solutions to keep the accession process on track. At this early stage, the focus is on ‘democratic conditionality’, “the *sine qua non* political condition of accession to the EU” (Schimmelfennig and Sedelmeier 2008). Compliance with the conditions set by the European Commission, and its opinion on membership application, requires a re-building of the political and legal system according to the EU’s liberal-democratic values. Building on previous unfavourable experiences, the EU is keen to ‘tie-down’ a democratic transition which is fully committed to the rule of law. Hence, it provides very clear and detailed conditions (including sanctions for backsliding) and

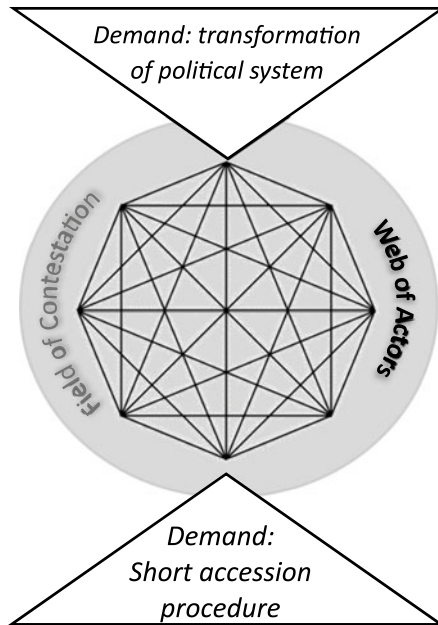
the fundamentals chapter determines the pace and success of the negotiation process. The EU, thus, has leverage, and its rewards and costs are relatively clear and credible. In accordance with the External Incentives Model—and considering there are hardly any relevant stakeholders opposing further EU integration—we could expect a quite uncontested transposition of EU demands (at least for the conditions set by the Commission in its opinion on the candidate status), with the only ‘external’ unknown being the further progress of the war.

However, Ukraine is not merely the recipient of European demands but itself asserts a swift accession process.³ Against the argument of strict conditionality, Ukraine adamantly demands recognition for its perceived sacrifices for Europe. While this does not challenge the principles of conditionality, the full picture can only be understood, if we additionally consider the scope of contestation of the rules, norms and the EU’s accession process. Contestation is likely to arise on two levels: first, concerning the EU’s expectations towards Ukraine as to which transformation achievements are sufficient for further progress and, second, between the European Commission and the EU’s Member States, especially as the latter tend to ‘apply the brakes’ on the accession. Focusing on contestation allows us to capture the politicisation of EU conditions, and in particular the mobilisation of different understandings of norm content and norm application in a field of contestation.

Graphic 8.1 illustrates our model of analysis:

³ To overcome the dichotomous thinking of the EU as demanding/offering institutions and Ukraine (as well as other EaP and ENP countries) as being recipients of the EU’s democracy promotion strategies, the EU’s practices and respective contestation in conjunction with democracy support is reconceptualised in the Horizon Europe project *SHAPEDEM-EU Rethinking and Reshaping the EU’s Democracy Supporting Its Eastern and Southern Neighbourhoods*, <https://shapedem-eu.eu/>.

European Union: Political Conditionality



Ukraine: limits of transformation

Graph 8.1 Analytical framework

In our research, we employ the qualitative method of document analysis. The chosen documents are textual devices of different kinds and quality, and target different potential audiences. These include official EU and Council of Europe (CoE) documents, Ukrainian and international printed media documents, publications from international, European and Ukrainian think tanks and positions from CSOs within Ukraine. We presuppose that all documents are “artefacts that are created for a particular purpose, crafted according to social convention to serve a function of sorts” (Coffey 2014). Within our selection of documents for qualitative analysis, we reflect upon their original purpose and audience while being aware that their narrative structure is closely linked to contexts of production and intended audiences.

ISSUES OF SOVEREIGNTY AND TIMING: SKETCHING THE FIELD OF CONTESTATION

Due to the latent danger of democratic ‘backsliding’, the enlargement process in recent years has been characterised by a “principle of mistrust” (Kochenov and Janse 2022). In turn, this has led to a steadily increasing emphasis on ‘**fundamentals**’ in order to make sure that new members become stable liberal democracies and do not succumb to backsliding. All current reform proposals focus on better incentives (but also stricter sanctions) to induce a true ‘value’ transformation. Fulfilling all political conditions is regarded as essential for a successful alignment with the *acquis* in all other policy areas. The European Commission has assessed the progress of Ukraine in the ‘Fundamentals Chapters’ section (Judiciary and Fundamental Rights, Justice, Freedom and Security, Public Procurement, Statistics and Financial Control) stating its opinion on Ukraine’s application for EU membership in June 2022 (European Commission 2022) and in a follow-up analytical report in February 2023 (European Commission 2023b). Candidate status was granted to Ukraine by the European Council under the condition that several conditions were swiftly completed. For most aspects covered by this cluster, the Commission certified Ukraine in February 2023 as having “some level of preparation” and at least partial alignment with the *acquis*. In many instances, the problem is not with legislation or strategic planning but with implementation, resulting from insufficient funding, lack of sufficiently trained staff and low accountability. The Council’s Conclusion (February 9) thus also acknowledges “the considerable efforts that Ukraine has demonstrated in recent months towards meeting the objectives underpinning its candidate status for EU membership” (European Council 2023). But is this progress sufficient to guarantee quick progress on the opening of accession negotiations?

In our analysis of this early accession process under the condition of war, we move away from a static understanding of EU norms and conditions as a ‘simple given’, we address their inherent contestedness already at this early stage of transposition and we focus on actor-constellations and possible strategic alliances in this field of contestation. We show this by addressing first, the ‘rule of law’ conditionality, in particular the reform of the judiciary, and second, the politicisation of time in this process.

Contesting the Sovereignty to Regulate

Ukraine's own report on compliance with the Association Agreement (Ukrainian Government 2023) concluded that its implementation progressed considerably in 2022. A separate chapter on the candidate status of Ukraine ascertains the implementation of an already significant part of the required conditions. This serves to show that Ukraine is doing its part for a speedy start of accession negotiations. A CEPS analysis of these new mechanisms, which have been introduced in response to the conditions set by the EU, concludes that while the conditions concerning the media environment and human rights have been mainly implemented, further efforts are required in the remaining areas, particularly with regard to the amended law on the selection procedure for judges of the Constitutional Court of Ukraine.

The judiciary is still one of the least trusted branches in Ukraine: an opinion poll in 2019 found that more than 70% of Ukrainians did not trust the judicial system; and distrust in the Constitutional Court was slightly above 60% (Council of Europe and Razumkov Centre 2023; Maasikas 2021). The judiciary acquires of the EU stresses the independence, professionalism/integrity, impartiality and efficiency of the judiciary. Ukraine joining the Council of Europe in 1995 was based on the understanding that Ukraine was to reform its legal and judicial system and to ensure the independence of the judiciary in conformity with the Council of Europe standards (notably a reform of the appointment and tenure of judges) (Parliamentary Assembly of the Council of Europe 1995). A major reform of the Constitutional Court in 2016 was commended by the Venice Commission, particularly the introduction of a competitive selection of judges. However, gateways for undue political influence persisted (European Commission for Democracy Through Law/Venice Commission 2016). In its urgent opinion on the reform of the Constitutional Court in 2020, the Venice Commission restated the problem of "politically motivated appointments" and the need to ensure not only professional qualities but also a "high moral character". The Commission suggested a reform of the appointment system, particularly the establishment of a screening body including highly reputed international experts (European Commission for Democracy Through Law/Venice Commission 2020).

After receiving candidate status, Ukraine pushed forward with the reform of the selection procedure of judges with a draft law, on which

it requested an opinion from the Venice Commission in October 2022. The Venice Commission, as a consequence, issued an urgent opinion on the draft law on November 23, 2022. It commented on the aim of the legislative amendment to set up an Advisory Group of Experts (AGE) with the task of assisting the existing three appointing bodies “in assessing the moral qualities and legal competences of candidate judges of the Constitutional Court”, consisting of three national and three international experts, thus following up the recommendation of the previous opinions. One key recommendation was “to provide in the law for a solution in cases where the AGE cannot reach a decision” (European Commission for Democracy Through Law/Venice Commission 2022a, 2022b). The final opinion of December 19, 2022, dealt with this in more detail and added that “for as long as the AGE will be operating with international members, the number of AGE members should be increased to seven. The seventh member should be on the international quota” (European Commission for Democracy Through Law/Venice Commission 2022b). In the meantime, Ukraine had already passed the law six days before this opinion was published—without including these recommendations. The European Commission consequently urged Ukraine to follow up on the new recommendations in order to “advance in its EU membership process” (Statement by the Spokesperson, 13.1.2023).

On May 5, 2023, President Zelenskyy met with a delegation of the Venice Commission to confirm Ukraine’s readiness to continue with the reform of the Constitutional Court (President of Ukraine 2023), pointing to a case of ‘applicatory contestation in good faith’. Contestation, however, goes deeper and evolves around the issue of ‘limited sovereignty’ of accession countries. In the field of ‘fundamentals’, the European Commission draws on the Council of Europe’s (CoE) Venice Commission to demand very specific and detailed judicial reforms, putting the selection procedure of judges at the Constitutional Court under international supervision—a demand hardly any of the current EU Member States would accept. The Venice Commission has acknowledged the existence of various judicial systems in Europe but has turned to innovative and less politically controllable selection procedures for new democracies, procedures it does not deem as being necessary for older democracies because of their legal and democratic cultures (Damjanovski et al. 2020, 8). Ruslan Stefanchuk, the speaker of the Ukrainian Parliament, considers the conclusion of the Venice Commission as “recommendatory in nature” and “sometimes ... detached from reality”. In his opinion, Ukraine

cannot give up on its sovereignty and “cannot have someone elect judges to the Constitution Court” for it (Sudovo-juridična publikacija 2023) (referring to the higher quorum of international members in the AGE). Hence, we observe **sovereignty contestation** as political actors (who can become veto players, e.g. members of the parliament) question the EU’s legitimacy to encroach on Ukraine’s sovereignty so deeply. This resistance against European interference has already been described for other Eastern European countries. The “West’s right to evaluate” (Krstev and Holmes 2018) has been increasingly perceived as a loss of sovereignty and is regarded as one source of illiberal resurgence. Likewise, it also connects to a more general notion that claims to sovereignty are increasingly politicised (also within the EU) in multidimensional conflicts. In particular, CEE countries have challenged the EU’s legitimacy to promote reforms in areas central to state sovereignty, notably judicial reform (Brack et al. 2019; Coman and Leconte 2019).

However, the web of actors is more diverse: CSOs actively build on the transformative pressure on national institutions from outside in this accession procedure. By issuing a joint statement, they urge “international partners not to participate in the fake reform of the Constitutional Court” and demand that the Venice Commission’s and the EU’s positions “are taken into account by Parliament through amending the law” (Zmina 2023). Their concern is that the current version of the selection procedure allows undue political influence and endangers the independence of the constitutional court, as politically appointed members of the AGE will have decisive influence on the selection of future judges of the Constitutional Court. A civil society with the ultimate goals of guaranteeing standards of rule of law and transparency and fighting de-oligarchisation and state capture (goals it has defended in two revolutions) significantly raises the costs for ‘non-alignment’ and constantly challenges Ukrainian decision-makers to put their European commitments into action as a shared community of values. They regard the ‘sovereignty argument’ as a pretext to hedge not only the judicial system from undue external control but the whole political system from sincere reform in order to protect vested interests. By demanding stricter democratic conditionality implementation, they aim to keep a high level of pressure on Ukrainian authorities. Hence, CSOs support external interventions as they perceive the EU’s democratic conditionality as being a means to achieve their own goal of increased democratisation.

Time-Frame Contestation

Time matters for accession—for both sides. For Ukraine, only a permanent entrenchment in European institutions and programmes can provide the scope of security they are pursuing. Four central arguments of the Ukrainian government for ‘fast-track’ accession can be discerned: (1) EU membership increases Ukraine’s commitment to continue fighting against Russia for self-defence and for the benefit of the EU, (2) Ukraine has earned the prospect of membership through its dedicated struggle and enormous sacrifices in a war triggered by the country’s western course, (3) Membership is an essential building block for a victorious outcome of the war, (4) A positive impact can only be exerted if accession takes place expeditiously (summary of several twitter messages by Volodymyr Zelenskyy between February and June 2022).

Among the Ukrainian population, the approval of EU accession is about 90% (Radio Svoboda 2022); almost 70% hope to join within a few years; and about a third would like to join within 1–2 years, depending on the course of the war (Rating Group 2022). Additionally, Ukrainian CSOs have demanded candidate status (Cedos 2022; Civil Society Manifesto 2022) and see the accession process as a chance to find support for their own demands for transparency and democracy within European institutions. Considering our web of actors, Ukrainian political elites, civil society and population unite around the demand for swift accession. A clear objective of Ukraine’s 2022 report on the implementation of the Association Agreement, with a special chapter on the fulfilment of the conditions for candidate status, is to signal the country’s rapid progress in fulfilling all pending requirements to begin accession negotiations.

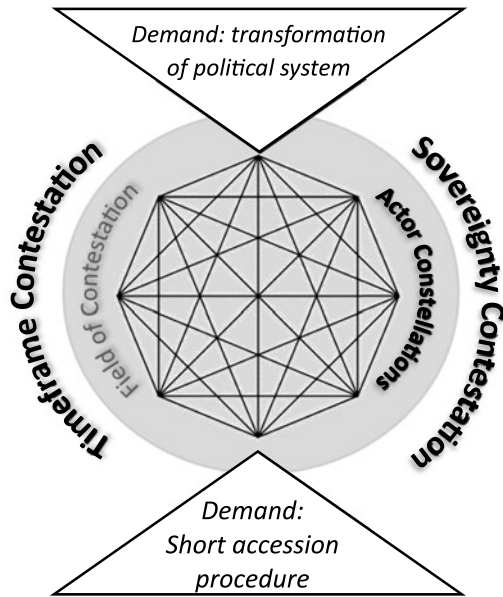
Time is also critical for the EU: in an increasingly competitive world order and under the impression of war in Ukraine, (waged in order to abolish the liberal “Western” world order), the EU must prove that it has the ability to attract, transform and stabilise its immediate neighbourhood—and to live up to the given accession promises (see for the “distinctive liberal outlook” of liberal power EU Joergensen in this volume). Since the last successful accession in 2013, time has become a more contentious issue. The WB countries have increasingly lost hope in the successful conclusion of accession procedures, leading to a “deep disappointment” that fuels nationalist rhetoric and democratic backsliding (Brzozowski and Makszimov 2021). This growing Euroscepticism is a result of “the actual methods, timing and impact” of the accession

process (Belloni 2016), which reflects the dissatisfaction with the pace of accession (Bieber 2020). This is also the result of a more ‘politicised’ accession process, managed in an intergovernmental way based on “more uncompromising nationalist Member State demands” (O’Brennan 2014) (for a detailed analysis of the “hostage-taking of foreign policy decision making” Müller and Slominski in this volume). “Enlargement resistance” (Economides 2020), due to the increasing heterogeneity of interests and resulting difficulties in building consensus within the EU institutions, as well as problems with rule of law mechanisms (Bélanger and Schimmelfennig 2021), have dimmed the accession perspective of the WB states. This is likely to remain an issue with Ukraine, despite all the expressed solidarity. Contestation of the speed of integration has been prevalent since the Ukraine’s announcement, in February 2022, of membership application of the EU (Gawrich and Wydra 2023 *forthcoming*). Previous publications on the Western Balkans have already stressed that accession puts the pro-accession European Commission against accession-sceptical Member States (Belloni 2016; Ker-Lindsay et al. 2020). This conflict is already discernible with regard to Ukraine. While Poland’s Prime Minister, Mateusz Morawiecki, believes that an “accelerated path” to the EU is possible for Ukraine and the Republic of Moldova (Reuters 2023), Portugal’s Prime Minister, António Costa, warns against dampening unrealistic expectations (República Portuguesa 2022). Others, out of fairness to the WB countries, oppose both preferential treatment of Ukraine and Moldova (e.g. Netherlands and Austria) (Stuart Leeson 2022 and Tweets by Austrian chancellor Nehammer) and giving preference to alternative policy models, such as the European Political Community (EPC) (Politico 2022). The attitude towards enlargement is also ambivalent among the EU’s populations. According to the Winter Eurobarometer 2022/23, 52% of the EU population is in favour of enlargement in the next few years, without specifying the accession countries or the specific period. The variance can be illustrated by the figures for France (33% in favour, 54% against) and Lithuania (73% in favour, 13% against). In Germany and Austria, rejection predominates with over 50% in each (European Commission 2023a).

This ‘time-frame’ contestation is likely to have two effects: first, not only are different assessments of progress likely (already at this stage, Ukrainian authorities measure progress by ‘enactment of laws’, while the European Commission stresses capacity building and implementation), but we also expect increasing contestation of rewards, as every

step towards membership is dependent on the unanimous support of Member States. While the Commission might press forward (at least rhetorically), it is likely that Member States will continue on the path to enlargement with ‘their brakes on’. Second, and as a consequence, this might lead to similar frustrations in Ukraine, as are discernible in the Western Balkans, and will dampen the EU’s attractiveness and thus its ‘transformative power’.

European Union: Political Conditionality



Ukraine: limits of transformation

Graph 8.2 Contesting conditionality—time frame and sovereignty

CONCLUDING REMARKS

On the one hand, Ukraine's EU accession process represents the current culmination of a long-learning curve for the EU regarding past mistakes in enlargement processes. The lessons learned are particularly evident in the increased relevance of norms and values in the accession process, which is why the fundamentals and their role in the accession process were chosen for this paper. However, the particular relevance of democratic norms and values in the accession process also increases the importance of the social responsiveness of accession because democratic norms cannot be decreed, but lived. This justifies the combination of conditionality and contestation used in this case study, as the contestation approach allows for a better understanding of the bottom-up perspective.

On the other hand, an accession process with a country that has been exposed to a brutal war is an exceptional new challenge for the EU. This increases the moral-ethical commitment of all involved because accession is perceived as being more existential than before. The overall uncertainty about the war's outcome and the Ukrainian authorities' management capacities is enormous. We therefore observe a particular caution on the EU side and a lot of empathy on the Ukrainian side. The increased importance of the fundamentals in the accession process can lead to challenges for Ukraine, in that the overall stress of survival, the general exceptional situation, can hardly favour the growth of a democratic culture.

Against this background, we attempted to link previous, traditional understandings of conditionality with concepts of contestation from general international relations in an innovative and constructive way, in order to grasp the politicisation of the accession process and to put emphasis on the challenges for the EU—amplified by the war in Ukraine—of defending democratic values while remaining (or becoming) a credible geopolitical actor, able to promote its accession procedures.

An accession process in the context of a brutal war can give rise to a particularly high number of hopes and fears. The analytical facet of contestation, according to Wiener, inherent in all international interactions, has been relatively overlooked in enlargement studies. This, we assume, is a helpful broadening of perspectives on EU accession processes because by linking conditionality and contestation, we are able to look at a total of four levels: the EU institutions and their Member States; and Ukrainian authorities and society.

We consider our analysis as an exploratory test of the application of our contesting conditionality concept. An EU accession process has never been as politicised from the outset as Ukraine's ongoing accession process. Additionally, unlike in previous accessions, the pace of accession is also a contested issue among all stakeholders involved. We address this conceptually through the 'Time-frame Contestation'. This contestation exists among EU Member States, between the European Commission and the Council, and between Ukraine and the EU.

The EU's focus on fundamentals entails completely different modes of interaction in the area of democratic conditionality since there is more pressure from the European side to secure democratic and rule of law principles. This impinges on traditional understandings of contestation, especially given the Venice Commission's recommendations, which have prioritised international 'supervisors'. This 'intrusion' has been met with resistance by political actors but also with calls for more support by CSOs.

On both issues, we observe that the field of contestation is not characterised by an opposition between the EU and Ukraine but rather within a web of actors engaging in this contestation, building alliances and strategies to fix their respective interpretations of conditionality. We assume that our analytical design is also suitable for studying other accession processes of EaP and WB countries. This could also be linked to qualitative and discursive network analysis (Ahrens 2018; Leifeld 2020) to gain deeper insight into the dynamics between actors and should be related to current literature on the increasing politicisation of sovereignty (Crespy et al. 2021).

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