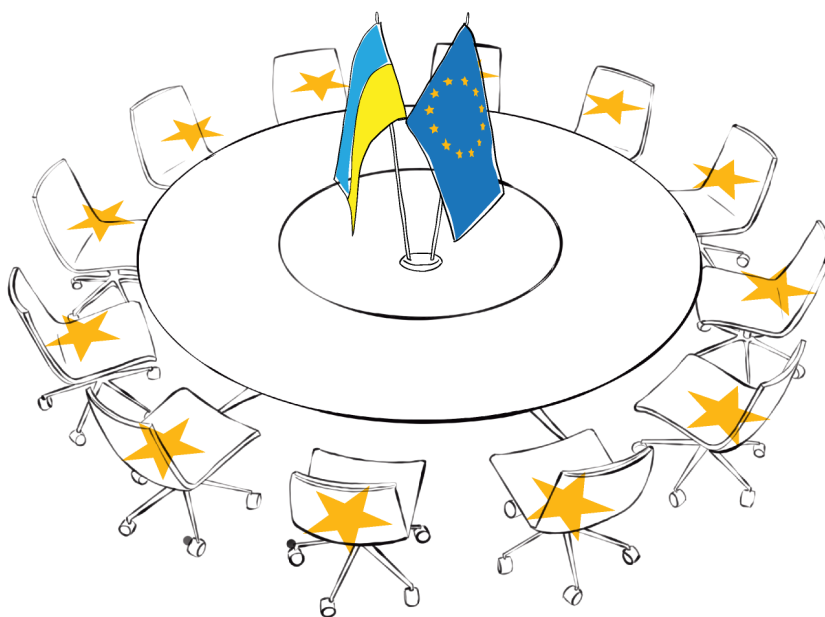




PREPARING FOR ACCESSION TALKS WITH THE EU:

TIPS AND TRICKS FOR UKRAINE

Alyona Getmanchuk,
Leo Litra





The discussion paper was produced under the Ukrainian Think Tank Development Initiative (TTDI), which is implemented by the International Renaissance Foundation (IRF) in partnership with the Open Society Initiative for Europe (OSIFE). TTDI is funded by the Embassy of Sweden in Ukraine.

The views and interpretations expressed in this discussion paper are the authors' and do not necessarily reflect those of the Government of Sweden, IRF and OSIFE.

PREPARING FOR ACCESSION TALKS WITH THE EU:

TIPS AND TRICKS FOR UKRAINE¹



Alyona
GETMANCHUK



Leo
LITRA

New Europe Center

Kyiv, December 2022

¹ The analysis is based on 37 interviews and meetings with government officials, former negotiators and representatives of relevant analytical centers in Prague, Warsaw, Berlin, Riga, Zagreb, Skopje and Podgorica

TABLE OF CONTENTS

3	Introduction
5	Negotiation framework: what has changed with the new methodology?
8	Are negotiations really negotiations?
10	How to organize the negotiation process?
13	People are leading the process of negotiations
15	Institutions for accession
17	Consensus on the EU
19	Advocacy in member states
21	Special elements that can accompany introductory negotiations
24	SUMMARY AND RECOMMENDATIONS
27	ACKNOWLEDGMENT LIST

INTRODUCTION



Although Ukraine was granted the EU candidate status only in June 2022, it is already preparing, to some extent, for the start of accession negotiations with the European Union. Kyiv is doing this in two ways. Firstly, it is fulfilling the seven recommendations that it received along with the candidacy. Even if some EU capitals may see these recommendations mostly as post-conditions for the candidate status, Ukraine primarily perceives them as prerequisites for opening accession talks. A positive momentum² is currently observed in the implementation of many of the recommendations, which indicates the presence of political will to fulfill the obligations undertaken; that said, there are some problems in certain directions. Secondly, Ukraine is working out an appropriate negotiation structure and is actively studying the experience of other countries that have already been admitted to the European Union.

Given the critical importance of opening accession negotiations and the unparalleled conditions in which Ukraine is compelled to carry out the EU accession process, the New Europe Center has decided to make its own analytical contribution to the country's preparation for this vital process. To this end, we have conducted a series of interviews directly with those involved in the negotiation process in certain Central European countries, namely Poland, Czechia and Latvia, whilst also making a study visit to three countries of the Western Balkans. Only one of which is already a member of the European Union (Croatia), with the other two — Montenegro and North Macedonia — having been candidates for EU membership for many years. For Ukraine, the experience of the Western Balkans is particularly emblematic, from the standpoint of the time frame, as in Central European countries, it is often believed that their experience is no longer relevant or "outdated" for Ukraine. The new methodology of carrying out accession negotiations, which the current Western

² Candidate check-2: Where Ukraine is in the implementation of 7 EU recommendations for candidacy?, Analysis based on the independent monitoring carried out upon the initiative of the New Europe Center with the involvement of leading sectoral experts, November 15, 2022, <http://neweurope.org.ua/analytics/kandydat-check-2-de-ukrayina-perebuvaye-u-vykonanni-semy-rekomendatsij-yes-shhodo-kandydatstva/>

Balkan candidates already use, and other challenges (bilateralization of European integration) that arise during the accession process.

This experience also shows that even if the countries of the region begin the accession at the same time, they do not necessarily complete it together. For instance, countries like Croatia and North Macedonia, which started moving towards entry into the EU in 2002 — a point constantly emphasized in Skopje — have eventually found themselves in entirely different positions in the context of joining the European Union. Croatia became an EU member (the latest to date) in 2013, whereas North Macedonia is just starting accession talks alongside Albania. The experiences of Montenegro and Serbia, which have been negotiating their accession for ten and eight years, respectively, are also instructive.

The experience of the Western Balkans demonstrates that the admission process prior to the 2008 financial crisis and in its aftermath are two different processes. Croatia, which succeeded in joining the European Union, is perceived in other capitals of the region as a positive exception rather than the rule or the logical conclusion of accession negotiations.

If there is one thing in common between the admission processes of Central European countries, the Western Balkans and Ukraine, it is that these processes will be political and technical to an equal extent. Moreover, although those who have been in this process claim that the political component is decisive, Kyiv will have to focus equally and simultaneously on both elements in order to move forward. Victory in the war is of utmost priority that guarantees the survival of Ukraine as a state and Ukrainians as a nation; but joining the European Union safeguards Ukraine's development. The process of EU accession, among other things, is also a process of state building and greater opportunities to ensure a decent life for Ukrainians.

At the same time, accession negotiations will help a post-war Ukraine to switch from heroic identity politics and the constant search for friends and foes or betrayal and victory to practical tasks aimed at strengthening institutions and improving living standards. At least, this happened in most countries that embarked on the process in question.

NEGOTIATION FRAMEWORK: WHAT HAS CHANGED WITH THE NEW METHODOLOGY?



At the time of the unprecedented process of EU enlargement — the so-called Big Bang enlargement of 2004 — the accession process was organized on the “fewer stages with fewer barriers” principle. As the European Union continued to enlarge, it introduced an ever-increasing number of new rules and preconditions. In Romania and Bulgaria’s case, the EU already introduced post-accession monitoring (a coordination and verification mechanism), which would exert additional pressure for the successful implementation of reforms. During Croatia’s accession, benchmarks for opening negotiations were put in place. Later on, in 2020, following French opposition to EU enlargement in the Western Balkans, a new methodology was introduced that further complicated the accession process. The methodology revision was conceptualized by French President Emmanuel Macron, not least because of the local election in France. There is a belief, however, in the capitals of the Western Balkans that this was done deliberately, to make the future EU membership of these countries as difficult as possible, if not altogether unachievable.

The methodology revision was conceptualized by French President Emmanuel Macron, not least because of the local election in France; however, there is a belief in the capitals of the Western Balkans that this was done deliberately, to make the future EU membership of these countries as difficult as possible, if not altogether unachievable






According to this methodology, the 35 negotiation chapters were divided into three areas and six clusters, causing a mixed reaction among experts even in the EU member states — for example, regarding the combination of quite different areas in one cluster (for instance, agriculture and regional policy).

Nonetheless, the major innovation of the new methodology was the attribution of a central role in the negotiations to the so-called fundamentals. This is the first cluster, which clearly emphasizes building democratic institutions and implementing the rule of law (see table below). In practice, this means that a country applying for accession cannot move forward unless it has sustained progress on chapters 23 and 24. Moreover, even if a particular country has made sufficient progress, confirmed by the relevant evaluations of the European Commission, and can theoretically close many other chapters, the balance clause is activated that, roughly speaking, freezes the process until substantial progress is achieved precisely on chapters 23 and 24. It is this principle of balance that has worked accordingly (and negatively from the standpoint of accelerating membership) in the case of Montenegro, which is still beseeched with considerable issues with organized crime and the rule of law.

The promoters of the strict adherence of the entire process to the “fundamentals” claim that, in fact, in the new methodology the EU has set out solely what was already reflected in many documents of the Council and the European Commission regarding the Western Balkans.

Table: Visualization of the division of clusters and negotiation chapters under the new methodology

ACCESSION NEGOTIATIONS ACCORDING TO THE REVISED METHODOLOGY: THEMATIC CHAPTERS DIVIDED IN 6 CLUSTERS

 CLUSTER 1 The Fundamentals of the Accession Process <p>Functioning of democratic institutions Public Administration Reform Economic Criteria</p> <p>Chapter 23: Judiciary and fundamental rights Chapter 24: Justice, freedom and security Chapter 5: Public procurement Chapter 18: Statistics Chapter 32: Financial control</p>	 CLUSTER 2 Internal Market <p>Chapter 1: Free movement of goods Chapter 2: Freedom of movement of workers Chapter 3: Right of establishment and freedom to provide Chapter 4: Free movement of capital Chapter 6: Company law Chapter 7: Intellectual property law Chapter 8: Competition policy Chapter 9: Financial services Chapter 28: Consumer and health protection</p>	 CLUSTER 3 Competitiveness and inclusive growth <p>Chapter 10: Information society and media Chapter 16: Taxation. Chapter 17: Economic and monetary policy Chapter 19: Social policy and employment Chapter 20: Enterprise and industrial policy Chapter 25: Science and research Chapter 26: Education and culture Chapter 29: Customs union</p>
 CLUSTER 4 The Green agenda and sustainable connectivity <p>Chapter 14: Transport Chapter 15: Energy Chapter 21: Trans-European networks Chapter 27: Environment and climate change</p>	 CLUSTER 5 Resources, agriculture and cohesion <p>Chapter 11: Agriculture and rural development Chapter 12: Food safety, veterinary and phytosanitary policy Chapter 13: Fisheries Chapter 22: Regional policy and coordination of structural instruments Chapter 33: Financial and budgetary provisions</p>	 CLUSTER 6 External Relations <p>Chapter 30: External relations Chapter 31: Foreign, security and defence policy</p>

Critical voices regarding such an adherence to the fundamentals point out that even the greatest emphasis on the rule of law in the negotiation process does not guarantee setbacks in this area when the country joins the EU³. For example, Poland and Hungary had the highest indicators in this sphere, but it was the problems in these countries that provoked what was called the "the rule of law crisis" in the EU. Another question regarding the fundamentals cluster concerned the extent to which the chapters "Financial Control" and "Statistics" could be part thereof.

Critical voices regarding such an adherence to the fundamentals point out that even the greatest emphasis on the rule of law in the negotiation process does not guarantee setbacks in this area when the country joins the EU

Finally, another additional change, unfortunate for the acceding country, is related to the fact that the new methodology allows the Commission and any member state to block the negotiation process, which some of them have already begun to abuse. By comparison, the "old" methodology allowed blocking the process upon the request of the Commission or one-third of the member states.

Moreover, in accordance with the new methodology, the country that joins the EU receives introductory and final benchmarks for most of the chapters that are the subject of negotiations. Besides, for chapters 23 and 24, as well as for some other chapters, interim benchmarks are also introduced to be achieved in order to record progress. For example, in Montenegro, the process was delayed, among other things, due to the implementation of the intermediate benchmarks of chapter 23, because Podgorica was unable to appoint four imminent judges with a two-thirds majority.

³ Can the EU overcome its enlargement impasse?, Marek Dabrowski, February 27, 2020, Bruegel, <https://www.bruegel.org/comment/can-eu-overcome-its-enlargement-impasse>

ARE NEGOTIATIONS REALLY NEGOTIATIONS?



The process of accession negotiations with the EU in countries that have relatively recently become EU members or have been candidates for a long while is quite often portrayed as rather lop-sided, which in fact has little to do with negotiations in the traditional sense of the word. The process of accession talks is a transposition process of the European Union Acquis into the legislation of the country joining the EU. Accordingly, the only thing that is actually being negotiated is the time frame during which a particular country is able to implement certain acquis into its own legislation. What can be even more frustrating for candidates just getting ready to open accession negotiations is that a merit-based approach is not always reflected in the process. The explanation from the member states is straightforward: it is the candidate country that intends to join the EU, not the EU aspiring to join a certain state.

Proceeding from the experience of the Western Balkans in the accession process, it can also be concluded that some of the benchmarks are also subject to negotiations in the sense that these are better formulated within the dialogue with the EU.

Lastly, the paramount part of what can be negotiated is the length of the transitional periods for the entry into force of certain EU legislative acts, quotas and, possibly, some exemptions for traditional producers. Regarding transitional periods, one of the crucial elements is attention to the sequencing of enforcing the transitions. At the same time, Ukraine may face impediments here due to different visions of the transition period in the government and

business. It is therefore quite possible that the government will be interested in moving faster and agreeing on the transition periods in a shorter time frame, while business will be interested in a more gradual entry into the EU, given the price of implementing relevant standards. At least, that is what happened in many cases in the Western Balkans.

Negotiators from Central Europe and the Baltic states also draw our attention to the fact that in this process it is necessary to hurry slowly: it is important to make sure that not only the pace is preserved, but also the interests of businesses. That is why in some member countries, the transition periods in certain directions are still ongoing. In Croatia, for example, waste recycling is a case to point. In Latvia, it took a long time to replace all the potable water pipes in the country.

Negotiators from Central Europe and the Baltic states also draw our attention to the fact that in this process it is necessary to hurry slowly: it is important to make sure that not only the pace is preserved, but also the interests of businesses

At the same time, given the size of Ukraine, its developed agricultural sector and the scale of destruction during the war, it is quite likely that its accession negotiations may indeed resemble negotiations.

In addition, it is important to understand that being an EU member and being an even more advanced membership candidate are in fact different things. Membership, as was heard in Zagreb, can play the most important part: "protect us from ourselves," meaning conscious or inertial movements toward undermining democratic institutions, fighting corruption, the rule of law, human rights and other fundamental issues. Besides, the funds available to an EU member and to the candidate country are also entirely different. Therefore, the motivation to become an EU member should be preserved. In the case of Ukraine, which has been under an attack unheard of since World War II, this should not imply a decrease in the quality of reforms.

As new countries enter the negotiation process with the EU, the process of acquiring membership becomes ever more complicated — something that has been happening since the great enlargement in 2004, the last one when the admission of new members was equally welcomed in the member countries and in the EU capitals. To strengthen its negotiating position, Ukraine can make full use of its advantage, having a significant amount of raw materials, land, the ability to produce and export large amounts of electricity, etc.

HOW TO ORGANIZE THE NEGOTIATION PROCESS?



There is no cure-all success recipe telling how the infrastructure of the negotiation process should look like; everyone has had their own way. However, based on the countries surveyed, it can only be concluded that the process will be smoother if the negotiations are more inclusive and coordinated.

The questions of the so-called fundamentals will serve as the centerpiece against which the success of the negotiations will largely be judged; these are, first of all, negotiation chapters 23 and 24, which in the EU are often called the “mother of all other chapters”. In addition to being central in the negotiation process, the issues covered by these chapters — the rule of law, independence of the judicial reform, fight against corruption and organized crime, media freedom — have become the basis not only for the candidates, but also for the EU.

The fundamentals will serve as the centerpiece against which the success of the negotiations will largely be judged; these are, first of all, negotiation chapters 23 and 24, which in the EU are often called the “mother of all other chapters”. The issues covered by these chapters are the rule of law, independence of the judicial reform, fight against corruption and organized crime, media freedom

Since 2020, the European Commission has been publishing its own Rule of Law reports that describe the situation with the rule of law in the member states themselves. In the end, the entire negotiation process with the EU, as defined by experienced accession negotiators from Central Europe, is a constant effort to make a convincing case that a country has democratic institutions and a market economy.

In preparation for successful negotiations, Ukraine should address the fundamentals in a structured and pro-active manner. This is already possible thanks to the seven recommendations, some of which directly resonate with the fundamentals. It is on them that a special emphasis should be made, without recurrent rollbacks in the reforms already undertaken.

Judging from the experience of the Western Balkans, additional supporting instruments can be introduced: for example, some countries adopted a Rule of Law strategy, reflecting the issues set down in negotiation chapters 23 and 24, along with a corresponding action plan with a focus on solving the most problematic issues.

To understand how complicated the process of performing the fundamentals is, it is enough to list the stages of which it consists. After the launch of chapters 23 and 24, which, it will be recalled, open the negotiations according to the new methodology, Ukraine will receive the criteria for opening the chapters — opening benchmarks; this is not automatic either and will happen as a result of negotiations with the EU, whose implementation and positive assessment will provide an opportunity to receive interim benchmarks. Following the positive evaluation

of the latter, the country will receive the final criteria (closing benchmarks). And only after their implementation and completion of other negotiation chapters with the corresponding positive assessment will it be possible to close the chapters on the fundamentals.

Here it is worth dwelling separately on the case of Montenegro, which, in fact, is "stuck" in the negotiation process due to the implementation of the fundamentals. Podgorica is currently fulfilling the interim criteria (benchmarks) of negotiation chapter 23. In total, there are 48 (!) interim benchmarks for this negotiation chapter, and only after the positive assessment on the implementation of these interim benchmarks will the country receive the closing ones. Montenegro has been conducting accession negotiations with the EU for ten years now and is, in a sense, only halfway through the implementation of chapter 23. This does not mean that the next half of the road will take as long; depending on the speed and quality, it could be two years or more. However, what is important in this regard for Ukraine is that it should demand from the EU very clearly formulated benchmarks that do not contain general formulations. In the Western Balkans, in most cases, precisely those benchmarks that are vaguely formulated are the most difficult to implement. Ukraine will obviously be more prepared to carry this recommendation into effect, as it has already faced the problem of obscure — and, accordingly, such that can be interpreted in different ways and ultimately difficult to fulfill — wordings in the case of the seven EU recommendations on the candidate status.

In the Western Balkans, in most cases, precisely those benchmarks that are vaguely formulated are the most difficult to implement. Ukraine already had difficulties with interpreting the wording in the case of the seven EU recommendations on the candidate status, that is why it should demand concrete formulations from the EU

Apart from the fundamentals, an essential part of the negotiation process is cluster number 4, which includes transport, energy and the environment. Given the current context, it is likely that the salience of these chapters will increase even more, especially as far as energy is concerned. As in the case of the fundamentals, in order to have a well-structured and consistent reform process, Ukraine will have to devise road maps and action plans even prior to the start of the EU screening process — the first stage after the decision to open negotiations, which, properly speaking, precedes their commencement (North Macedonia and Albania are currently at this stage; the decision to open accession negotiations with them was made in July 2022). Such an approach would allow Ukraine not only to defend its position, but to defend it in a well-reasoned way. Absent convincing arguments, it is practically impossible to defend one's position at negotiations — one of the most important lessons of the countries ever to have taken part in this process.

For the negotiations to proceed, Ukraine will constantly have to prioritize certain laws. It is fortunate that Ukraine has already embarked on this process and has special procedures for submission and adoption in the parliament of legislative acts necessary for European integration (in some countries, these legislative acts are marked with the flag of the European Union). At the same time, as evidenced by examples from several countries, there are quite frequent cases of abuse of the procedure, when it is used to pass laws in the parliament that do not actually concern the EU. Such cases have been recorded in the Western Balkans. In general, experts in the Western Balkans warn that during the negotiations many laws and reforms will be made "in the name of joining the EU" and that is why the chief negotiator should be a person who can defend the real agenda of EU accession from political frictions and sideslips.

In several Western Balkan countries, there are quite frequent cases of abuse of the procedure, when it is used to pass laws in the parliament that do not actually concern the EU.

The reform process itself can also be simulated (mimicked) by individual political figures. As the experience of respective countries of Central Europe and the Western Balkans shows, in some cases the EU itself tolerates the pretense of reforms for some time, which ultimately only harms the candidate country. Accordingly, it is in the interests of the candidate country for the EU to be fastidious and honest from the start. Some government officials from the Western Balkans interested in a faster movement towards EU membership mentioned in their conversations that they would like Brussels to clarify their position on certain questionable decisions in their countries to be more clearly articulated.

In the course of the negotiations, it is also important that the country channel and properly manage its resources. The experience of the Western Balkans suggests that it is important not to disperse attention on various regional initiatives that may constantly emerge in the process, but to focus entirely on the future EU membership or the stages that can bring it closer. Access to the Single Market is one of the most serious achievements that can speed up the admission process. According to the new methodology, this section has a separate cluster and comprises nine negotiation chapters. At the same time, some EU capitals fear lest the inclusion of individual candidate countries in the EU Single Market even before membership should mean the suspension of reforms in the fundamentals cluster; in practice, however, it is hardly possible to integrate a country into the EU Single Market without reforms in the fundamentals. In the Western Balkans, there is also plenty of skepticism about such a phased entry into the EU: first, a full entry into the Single Market, and then membership itself. There are fears that the intermediate stage before

membership — entering the EU Single Market — could become the final stage.

At the same time, the EU is now considering the intermediate milestones on the way to membership that could accelerate the accession. The EU Commission president already mentioned that the EU wants Ukraine integrated into the Single Market. The existing Association Agreement between the EU and Ukraine is already providing for a high-level integration into the Single Market. Moreover, the new enlargement methodology provides for accelerated integration and “phasing-in” to individual EU policies, which means one can have elements of membership before actually becoming a member. Yet, no country managed to successfully use the “phasing-in” mechanism since this is a recent opportunity. However, from what happens in Ukraine-EU relations, for instance, in the energy area, one could say that the “phasing-in” is already taking place.

PEOPLE ARE LEADING THE PROCESS OF NEGOTIATIONS



Many countries that have undergone or are still in the process of EU accession emphasize that there can be no successful accession process without the right people carrying out the talks. Lessons from the countries of Central Europe and the Western Balkans differ as to who exactly should be involved in the negotiation process and on what basis. However, there is a prevailing opinion that the process should be sufficiently inclusive and that negotiating teams will only benefit when experts with different experiences and backgrounds are invited to join them, not just civil servants. For instance, in most of the countries surveyed, the negotiation teams include(d) representatives of universities, think tanks, non-governmental organizations, trade unions, etc. Furthermore, civil servants did not lead some negotiation chapters in Croatia, such as education, fisheries, and agriculture. In the case of Croatia, a maritime state, fisheries are of particular importance and caused fierce discussions during negotiations about the size of fishing nets. Such talks were generally entrusted to the head of one of the specialized companies, who was well-informed about the industry's peculiarities and the conditions needed to remain competitive.

Countries that went through the accession process underline that it is impossible to navigate the process without the right people

The inclusion of experts and civil society representatives instils greater confidence in the process both within the country and in the EU.

A vivid example of such inclusion is Montenegro, where nearly all think tanks were included in certain negotiation groups based on sufficiently structured selection, with clear participation criteria (the current Vice Prime Minister and Minister of European Affairs of Montenegro also previously worked in one of such think tanks). Yet, at the same time, it is in this country that the opposite trend is observed: some experts and public figures express doubts about their further presence in negotiating groups, because, according to representatives of some think tanks, they have a feeling that the authorities are trying to use their presence in the groups to legitimize certain decisions that are controversial from the standpoint of reforms.

Having civil society and experts included in the negotiations is creating trust towards the process, both in the accession country and in the EU

The priority during the negotiation process should be how to keep the people who are part of it. Remuneration is not the only issue. In the new members and other candidate countries, various educational and training programs in the EU member states and institutions enjoyed wide popularity. Some negotiators estimate that it takes at least six months to prepare a "new" person to participate in the negotiation process. Accordingly, as soon as one of the negotiators leaves the process, it affects its momentum. Over the last 10 years, North Macedonia, which could not start accession negotiations for an

extended period, has lost about 90 percent of the people involved in preparing for talks and is very well-versed in its specifics. The longer the negotiation process, the greater the risk of losing people.

The priority during the negotiation process should be how to keep the people who are part of the process. And it is not only about remuneration

The ideal option is to have the same head of the negotiating team and heads of working groups throughout the negotiation process. This means that at least the heads of the working groups should be not political appointees who will change every time the government changes, but professionals without party affiliation.

When it comes to what kind of people should prod the negotiation process, all countries are advised to bet on young people who are less experienced and knowledgeable, but committed to the cause of their country's EU accession; who are, in a positive sense, fanatics of the idea of EU membership; for whom negotiations on EU accession will be the mission of their lifetime — as they were, by their own admission, for a number of negotiators from Central Europe and the Baltics. Perhaps that is why the average age of negotiators in some new member states (for example, Croatia) was 27 years. Another friendly piece of advice from seasoned negotiators is to involve as many experts in exact sciences as possible: the negotiation process is, as they put it, all about tables and numbers.

In addition, it is necessary to have a clear understanding that to ensure a successful process, specialists of two categories must be involved. The first category is sectoral specialists from ministries who are deeply knowledgeable about a particular topic, can provide expert proposals for negotiations, but participate mainly only in "internal" talks, when positions are discussed and refined at the national level, not

in negotiations with Brussels. Another category comprises specialists with an understanding of how EU structures work, an excellent command not only of the English language, but also of what our interlocutors in various capitals called the "Brussels language" and who are able to "translate" the positions of sectoral experts from ministries into this language.

The issue of involving consultants and advisers from EU countries during the negotiations merits special attention. The experience of new member countries and current accession candidates reveals that such consultants should be engaged very selectively, without accepting all candidates proposed and chosen by specialized international agencies. In addition, it has been repeatedly heard that consultants from the countries that have themselves gone through the accession process (not EU founding countries) can give most valid pieces of advice and that the more recent experience they have, the more useful it is.

In this respect, an interesting model was also developed in the case of the Baltic states. In fact, it was a model of a certain supervisorship, when the three Scandinavian countries assumed guardianship — particularly advisory and consultation — in the accession process over the three Baltic countries (Finland over Estonia, Denmark over Latvia, Sweden over Lithuania). As soon as the Baltic capitals needed some help in the negotiation process, it could be provided by the institutions of the respective Scandinavian country.

INSTITUTIONS FOR ACCESSION



If well thought out and clearly organized, an institutional structure for negotiations is what will help the negotiation process to proceed in a much smoother manner. Several negotiators of Central Europe emphasize that the accession process is a state-building exercise in which "you end up with institutions you never had." The country should decide immediately which institution will be responsible for the process of negotiations with the EU. The most common models were when the office/bureau under the Prime Minister or the Ministry of Foreign Affairs took care of the opening negotiations. In some cases, there was talk of creating a separate Ministry of European Integration.

Some countries instantaneously found a model that they followed. In North Macedonia, for instance, the coordination model was developed as early as 1996 and has remained intact ever since, of which Skopje is visibly proud. That said, the country is just starting the opening negotiations and has not had the opportunity to test this model in practice. The reverse is true in Montenegro: in ten years, they have probably tried all currently existing models. Every model change is a potential waste of time and people.

Most of the negotiators interviewed are skeptical of the idea of a separate ministry of European integration, believing that every ministry should be European in the process of negotiations. Moreover, if such a ministry exists, other ministries will simply transfer responsibility for the entire negotiation process to it, appealing to more urgent, "internal" issues (saying something like "we don't have time for your Europe").

Most of the negotiators interviewed are skeptical of the idea of a separate ministry of European integration, believing that every ministry should be European in the process of negotiations. Moreover, if such a ministry exists, other ministries will simply transfer responsibility for the entire negotiation process to it

There are also different opinions about the number of negotiators who should be involved in the process in one way or another. Generally speaking, the experience of other countries shows that the core of the negotiating team — those who will actually conduct negotiations with Brussels — should be small (up to 20 people), but in general, hundreds of specialists may be involved. For example, in Montenegro, 700 specialists were engaged in the negotiation process until very recently; now they intend to reduce this number to 300–400.

Everyone is in agreement that the chief negotiator should have the appropriate resources and authority to promote the EU accession agenda through other ministries and the parliament and generally be a reputable person. Ideally, the top negotiator should be someone who can stay in this position from the beginning of the negotiations to the end. As the experience of individual countries suggests, every time a country lost a top negotiator, it needed about a year to "catch up" with the negotiation process later. In Poland, for instance, there were only two top negotiators during the entire period of

talks, but the second one, after being appointed as a result of the change of government and the election of a new prime minister, had a lot of experience in negotiations, having served as deputy of the previous top negotiator and head of the Polish mission at the EU. Hence, he had a profound and in-depth awareness of the progress of the talks, which ensured the process's continuity.

Ideally, the top negotiator should be someone who can stay in this position from the beginning of the negotiations to the end

Apart from negotiators working in the capital of the candidate country, it is necessary that the missions to the EU and in key member states must be significantly strengthened. For instance, North Macedonia — a tiny country by Ukrainian standards — has about 40 diplomats at its disposal in its mission to the European Union.

Along with building institutional capacity, the opportunities for receiving finance from the EU or individual countries will also increase. However, compared to previous enlargement waves, these opportunities may be different. In general, in the new member states, the period of generosity in the European Union is considered to have ended when the 2008 crisis hit. Nonetheless, considering Ukraine's unique situation, separate funding for facilitating the process of negotiations and relevant training programs may come in the form of budgetary support. Unfortunately, the IPA (Instrument for Pre-Accession Assistance) funds are unlikely to be available for Ukraine for some time, approximately until 2027, when the new budget period begins. At any rate, the chances of joining the EU grow if the country applies in the "very EU way" by preparing a reasoned assessment of needs, preferably an independent one.

CONSENSUS ON THE EU



Consensus regarding future EU membership — both political and social — is a kind of a must in the accession process. In Ukraine, particularly under the influence of Russia's military aggression, a political and social majority has currently crystallized, which sees the path to the EU as the only option and supports future membership. The level of support for EU membership is unprecedentedly high, standing at about 86 percent, according to the results of various surveys.

The level of support for EU membership among Ukrainians is unprecedentedly high, standing at about 86 percent

EU membership is also an idea that enjoys the support of the majority of Ukrainians in all regions of Ukraine without exception, including Donetsk and Luhansk regions. However, the task is to maintain consensus throughout the entire process — up to the acquisition of full-fledged membership in the European Union. Moreover, if politicians ascribe all unpopular decisions and steps to "pressure from Brussels," they will gradually provoke the erosion of support for EU membership. In the new members, Ukrainian politicians are advised not to resort to such tricks, since they will backfire on the entire process of EU accession. After all, this dissatisfaction can at

various stages be picked up by populist forces and used against EU membership.

Public support in entering the European Union also plays an important role because in the case of reforms where there is a lack of political will, the latter can be generated precisely by public pressure. The support for EU membership by society in Montenegro at the level of about 70 percent — even after 10 years of not that successful accession negotiations — has narrowed the political spectrum in this country to "pro-European" and "nominally pro-European" parties. None of the popular political forces openly challenges the country's European course⁴.

Despite the foregoing, it should not be excluded that public support may well be sapped by certain demands from Brussels, which are unacceptable to the majority of citizens. The experience of the countries that negotiated accession after wars is especially emblematic. Lessons from Croatia, which went through war shortly before the start of accession negotiations, are particularly useful for Ukraine. The EU's categorical demand to extradite military generals who committed war crimes, who were also considered national heroes in Croatia, significantly undermined public support for membership. Whereas the level of support for accession reached 82 percent at the time of accession negotiations, it fell to 39 percent in the process of the talks against the background of demands to surrender

⁴ The experience of the Western Balkans, which should help Ukraine, New Europe Center, October 14, 2022, <http://neweurope.org.ua/analytics/smuga-pereshkod-na-shlyahu-do-yes-dosvid-zahidnyh-balkan-shho-maye-dopomogty-ukrayini/>

military generals. Therefore, if the article in the Constitution regarding the minimum turnout in the referendum had not been changed, it is most likely that Croatia's EU membership would not have taken place due to the insufficient level of support at the time of the plebiscite.

It is also essential to involve the media and civil society in the entire negotiation process, since constant dialogue between them and the negotiating team is vital. It is thanks to the media and civil society that not only appropriate narratives are spread, but also an appropriate ambience is created in which negotiations take place and are perceived by the public of a given candidate country. Excessive secrecy and non-involvement usually lead to mistrust to the whole process and polarization.

ADVOCACY IN MEMBER STATES



Since the EU is no longer as enthusiastic and confident about the new waves of enlargement as it was during the historic enlargement of 2004 and given that there is no clear timetable for the admission of certain candidates to the EU, the need to advocate the future membership of a certain candidate country in key (and usually most skeptical and picky about expansion) EU countries has increased significantly. Even during Croatia's EU accession, the local negotiators had to visit the parliaments of all 27 EU members without exception to meet with representatives of all political parties to ensure there would be no unexpected developments at the stage of acquiring membership.

The lesson that the Western Balkans willingly share is that it is important not just to conduct reforms in the process of joining the EU, but to ensure that the capitals of the EU know about it. There must be ongoing advocacy in the key — and most skeptical — capitals of the European Union. The capitals of the Western Balkans complain that the most skeptical countries of the European Union still have very limited knowledge even about the Western Balkans, despite the fact that these countries, unlike Ukraine or Moldova, have long been on the political radar in the context of the future EU enlargement. Public opinion polls in the Netherlands and France have shown that only slightly more than 40 percent of the respondents could find the Western Balkans on the map (not a single country, but the entire region).

The capitals of the Western Balkans believe France, the Netherlands and Denmark to be the most skeptical (and the most difficult in terms of entry). Unlike Ukraine, they do not think that Germany falls under this category. It is also vital for Ukraine to work with a group of so-called "silent countries" — those that are generally in favor of enlargement, but very rarely express their position publicly at meetings of the EU Councils. It would be essential for Ukraine to consider a plan for joint advocacy actions in the skeptical countries, since their list is mostly the same.

The capitals of the Western Balkans believe France, the Netherlands and Denmark to be the most skeptical. Unlike Ukraine, they do not think that Germany falls under this category

It is also important to determine the person in charge of advocacy in the member states. Seasoned negotiators from the countries studied are convinced that it should be someone other than the person responsible for negotiations with the EU. Generally speaking, someone must coordinate the negotiation process within the country, while someone else must communicate about it with Brussels and the most difficult capitals. One person will not be able to address these two issues effectively.

It is also important to determine the person in charge of advocacy in the member states. Seasoned negotiators from the countries studied are convinced that it should be someone other than the person responsible for negotiations with the EU

In the case of Ukraine, such advocacy should be undertaken today — to transform the sympathy and solidarity in European capitals into support at the level of European societies for opening negotiations with Ukraine as soon as possible. Specifically, it is important to communicate actively, especially in Paris, The Hague, Berlin, Copenhagen, and Stockholm — on the progress we are making within the framework of the seven recommendations that Ukraine received along with the EU candidate status. During the opening negotiations, the need for such advocacy will be much greater: the opening and closing benchmarks address more technical issues, but the decisions on whose basis this process takes place are political, after the relevant criteria (benchmarks) are fulfilled.

It is of utmost importance to understand which countries, but also which individual representatives from these countries — reputable politicians, diplomats, intellectuals — can be Ukraine's allies in this advocacy.

The European Commission was an important ally for many countries and played the role of a “strict but fair broker” throughout the accession process. However, everything undoubtedly depends on specific personalities who occupy certain positions in the Commission.

SPECIAL ELEMENTS THAT CAN ACCOMPANY INTRODUCTORY NEGOTIATIONS

When talking about EU accession negotiations, we also have to understand that there are things that do not seem to be directly related to this process, but can have a significant impact on the course and pace of joining the European Union. We have highlighted them as two special elements. They are the bilateralization of European integration and Ukraine's post-war reconstruction, which in one way or another will accompany the process of Ukraine's EU accession.

Special element 1:

BILATERALIZATION OF EUROPEAN INTEGRATION.



The latest cases of accession negotiations indicate that the bilateralization of European integration — when a certain member state, mostly a neighboring one, begins to use the negotiation process to resolve certain bilateral issues — is becoming a new trend in the accession process. Moreover, the new methodology has given it a new impetus.

North Macedonia is the most vivid embodiment of the said problem. Skopje constantly emphasizes that it started moving towards EU membership together with Zagreb, but 20 years later, Croatia is already an EU member, whereas North Macedonia is just about to start accession negotiations. The reason thereof is the bilateral claims of neighboring countries. Initially, it was Greece that demanded a name change, which was also the reason for the postponement of North Macedonia's NATO membership. As soon as the country's name was changed, Bulgaria

blocked the process of starting accession negotiations due to issues related to the history and identity of Macedonians (in particular, Bulgarians do not recognize the Macedonian language, considering it Bulgarian).

A similar case, which delayed accession negotiations for almost two years, occurred between Croatia and Slovenia. The latter had questions regarding the delimitation of the border with the former. Recently, Greece and Albania have failed to reach a consensus on the maritime border, but decided to submit the matter to the International Court of Justice in The Hague, which helped Tirana avoid the blockage of accession talks.

Regarding the bilateralization of European integration, Ukraine's challenges are quite serious. The first elements of such an approach manifested themselves at the stage of concluding the Association Agreement between Ukraine and the EU, when the referendum in the Netherlands slowed down the entire ratification process. The case of historical and identity politics is also well known in Ukraine. As recent experience shows, potential friction on questions of history and identity can potentially accompany the negotiation process due to issues from the Hungarian side, but it can also at some stage become a point of friction with Romania and/or Poland, thus affecting the negotiation process.

Regarding the bilateralization of European integration, Ukraine's challenges are quite serious. The first elements of such an approach manifested themselves at the stage of concluding the Association Agreement between Ukraine and the EU, when the referendum in the Netherlands slowed down the entire ratification process

These issues acquire additional significance, given that since the beginning of the process of

EU accession in the Western Balkan countries, regional cooperation has become one of the important criteria in accession negotiations with the European Union. In the case of Ukraine, one can already observe a lot of critical remarks from the member countries and Brussels regarding the somewhat arrogant approach and the ability to establish regional cooperation with other candidate countries of the region, primarily Moldova. After all, the main rule followed in the EU in this respect is "you cannot bring your problems with your neighbors to the European Union."

In the case of Ukraine, even prior to the beginning of the opening negotiations, a question may arise about the feasibility of launching the process with a country whose territory is temporarily occupied (unless, of course, before the start of this process, Ukraine has liberated all of its territories within the internationally recognized borders). That is why some EU capitals recommend that Ukraine carefully study the experience of Cyprus, the only country that has gone through the accession process while not controlling a part of its territory.

Special element 2: POST-WAR RECONSTRUCTION OF UKRAINE.



In addition to the "traditional" barriers in the negotiation process, Ukraine will have one significant difference compared to other countries: the scale of post-war reconstruction. The aid and financial support that Ukraine will receive in the process is an opportunity for Kyiv not only to rebuild Ukraine after the war, but also to reform the country already in line with

the future EU membership, especially as regards the reform of the rule of law, procurement, and the fight against corruption. Furthermore, the incoming funds will apparently include oversight mechanisms, which is also positive for the accession process.

The most vital element is how effectively Ukraine will be able to spend the funds. If Ukraine successfully has a transparent and corruption-free post-war reconstruction, this will significantly increase confidence in it as a future EU member. Post-war reconstruction will, in fact, be a large-scale exercise for Ukraine in terms of spending EU funds and may speed up the accession process.

Post-war reconstruction will, in fact, be a large-scale exercise for Ukraine in terms of spending EU funds and may speed up the accession process

SUMMARY AND RECOMMENDATIONS:



Although Ukraine is now vigorously studying other countries' experience in preparing for negotiations, each case of EU accession is very individual; there are no universal recipes for success. Moreover, in the case of Ukraine, against which Russia is carrying out military aggression unprecedented and unheard of in Europe since World War II, the process of joining the EU may be completely different from not only Central Europe or the Baltic states, but also the Western Balkans. The common denominator is that, as in previous cases, the process will consist of equally important political and technical components, with an emphasis on the former.

Besides, as paradoxical as it may sound, in the case of Ukraine, accession negotiations with the EU may really resemble negotiations, not the rather technical process of implementing the EU acquis into national legislation, which was the case of a number of countries. This can happen both because of the size of Ukraine, the generally well-developed agricultural sector and, regrettably, the scale of losses and destruction inflicted by the war.

Based on the countries studied, it can be concluded that the key elements for successful negotiations are consensus, people, institutions and advocacy. Whereas people and institutions will appear "by default" as an integral part of negotiations, consensus — both political and societal — as well as advocacy may require extra efforts, which we must already be prepared to exert.

It is worth remembering that the process of EU accession is a constant effort to prove to the European Union that democratic institutions

and a market economy are functioning properly in a given country.

WHAT IS IMPORTANT TO PAY ATTENTION TO TODAY?

- The structure of negotiations should be thought out as early as possible, insofar as any change in the negotiation process will obstruct the continuity of the process and its quality. Key negotiators should ideally be people who can stay in the process for a long time — ideally from the beginning to the end, although it is clear: the longer the negotiation process, the greater the risk of losing people. The issue of retaining specialists involved in the negotiation process is one of the key issues for joining the EU. Although the core of the negotiating team itself should be small, in general hundreds of specialists may be involved in the process at the national level.
- Since it is people who are one of the major recipes of successful negotiations on the part of the candidate country, all the countries that have passed the negotiation process are advised to bet on young people who are less experienced and knowledgeable, but committed to the cause of their country's entry into the EU and are, in a positive sense, fanatics of the idea of their country's EU membership; they will perceive the negotiations on EU accession as the mission of their lives. In Croatia, for example, the average age of members of negotiating

teams was 27 years. It is also necessary to understand that two categories of specialists are needed: sectoral experts and those who know how to communicate a certain issue to the EU using the "Brussels language" into which the positions of the sectoral ministries will need to be "translated."

- Every ministry in the process of EU accession negotiations should become European. As a rule, the approach in which a separate ministry for European integration is established does not work because other agencies see it as "responsible for the EU affairs" while they can deal with other, internal issues. The key is the proper authority of the top negotiator and the availability of leverage on other ministries and the parliament.
 - Already at this stage, it is necessary to demonstrate and prove with concrete steps and decisions the commitment regarding issues that, according to the new methodology, are called the "fundamentals" in the EU and are related to the proper functioning of democratic institutions and the rule of law. Negotiation chapters 23 and 24, in which these issues are set out, will be the first to be opened in the negotiation process and the last to be closed. The more "homework" in this area is done before the opening negotiations, the less will be left for their duration. That is why today Ukraine must demonstrate noticeable and steady progress in implementing the seven candidacy recommendations, which directly resonate with chapters 23 and 24. It is also important to continue proposing the EU to start screening Ukraine's implementation of *acquis* even before the opening of negotiations.
 -
 - Even prior to the opening of negotiations, it is important to calculate and pre-empt the risks of the bilateralization of European integration, when the process of joining the EU is used by individual member states (especially neighboring ones) to solve their bilateral problematic issues in relations with Ukraine.
- North Macedonia, having been a candidate for EU accession for 17 years, could not start accession negotiations precisely because of the bilateralization of European integration. In this respect, it is of utmost importance to revise the enlargement methodology to the extent that no single country could block the entire accession process based on some bilateral disputes. The single veto must be replaced with a one third votes in the EU or to enforce the powers of the EU Commission in this respect. That could go hand in hand with the efforts to reform the decision-making process in the EU.
- It is essential to advocate Ukraine's future EU membership and the steps Ukraine is taking to move in this direction in the most skeptical and/or most demanding member states in respect of future enlargements (primarily, France, the Netherlands, Germany, Denmark and Sweden). The ideal option is to nominate a separate representative in charge of communication with Brussels and the capitals and to involve certain countries/reputable individual representatives to promote Ukraine's European integration dossier.
 - The issue of involving consultants and advisers from EU countries during the negotiations merits special attention. The experience of new member countries and current accession candidates reveals that such consultants should be engaged very selectively, without accepting all candidates proposed and chosen by specialized international agencies. Experience of the Western Balkans proves that consultants from the countries that have themselves gone through the accession process (not EU founding countries) can give really valid pieces of advice and that the more recent experience they have, the more useful it is.
 - The process of Ukraine's EU accession will be unique in terms of the scope of post-war reconstruction. The latter will not only be an opportunity for Ukraine to rebuild itself in line with its future membership in

the European Union, but will also become a kind of a large-scale exercise for the efficient and transparent use of EU funds. It can also significantly strengthen Kyiv's position as a future EU member.

- Public support serves as an important basis for the entire process of accession negotiations. It is able to generate political will in the matters where senior officials lack it. Politicians should avoid publicly attributing all unpopular decisions to "pressure from Brussels," since populist forces can use this to undermine trust in the EU and in general compound the admission process. It is the societal support for EU membership in Montenegro at the level of about 70 percent — even after 10 years of not that successful accession negotiations — that has narrowed the political spectrum in this country to "pro-European" and "nominally pro-European" parties. None of the popular political forces openly challenges the country's European course.

ACKNOWLEDGMENT LIST

The New Europe Center expresses its gratitude to Andreja Metelko-Zgombic, Jovana Marovic, Domagoj Hajdukovic, Branka Bosnjak, Vesna Pusic, Ognian Zlatev, Gerald Knaus, Dragan Tilev, Astra Kurme, Eva Horelova, Nikola Dimitrov, Leszek Jesien, Marina Scrabalo, Zoran Nechev, Simonida Kacarska, Dubravka Smolic Vlaic, Daliborka Uljarevic, Milena Muk and others who shared their thoughts and recommendations on how Ukraine should better prepare for accession negotiations with the EU.



ABOUT NEW EUROPE CENTER

The New Europe Center was founded in 2017 as an independent think-tank. Despite its new brand, it is based on a research team that has been working together since 2009, at the Institute for World Policy. The New Europe Center became recognized by offering high-quality analysis on foreign policy issues in Ukraine and regional security by combining active, effective work with advocacy.

The New Europe Center's vision is very much in line with the views of the majority of Ukrainians about the future of their country: Ukraine should be integrated into the European Union and NATO. By integration, we understand not so much formal membership as the adoption of the best standards and practices for Ukraine to properly belong to the Euroatlantic value system.

More about New Europe Center: neweurope.org.ua



-  <http://neweurope.org.ua/>
-  info@neweurope.org.ua
-  <https://www.facebook.com/NECUkraine/>
-  https://twitter.com/NEC_Ukraine