

EU Adopts Negotiating ‘Frameworks’ for Ukraine and Moldova: The Starting Gun for the Accession Process

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05 July 2024

Executive Summary

The EU Council adopted on 21 June 2024 the ‘Framework’ documents required to set into motion the formal processes of negotiating accession to the EU for both Ukraine and Moldova, with practically identical texts¹. These are politically significant steps – the starting gun pointing however not to a sprint but a marathon. Of the East European trio of accession candidates Georgia is conspicuous by its absence, due to the government’s sabotage of the country’s membership bid to consolidate its own grip on power.

As the EU’s last contribution to the enlargement process before the forecoming renewal of the leadership of the institutions, the Framework texts basically rehearse existing practice and doctrine without innovations. It’s only in its opening statements of the intergovernmental conferences with Ukraine and Moldova that the EU explicitly states that it will continue to support Ukraine and its people ‘for as long as it takes and as intensely as needed’ (emphasis added). The new accession round is, as stated in the texts, to be a ‘geo-strategic investment in peace, security, stability and prosperity’.

While the negotiating frameworks go into the nitty-gritty of the enlargement procedures, the opportunity is missed to make much needed improvements to them. The procedures are both over-complicated and subject to the politically deadening requirement for unanimity at every step, even the most technical. Precise reforms are needed, and it will be for the renewed Commission to consider these in the planned policy reviews announced for the start of their work.

¹ For Ukraine: <https://www.consilium.europa.eu/media/hzmfw1ji/public-ad00009en24.pdf>, and for Moldova: <https://www.consilium.europa.eu/media/45ilqaal/ad00011en24.pdf>

Fundamentals. The text of the negotiating frameworks promises “an even stronger focus on the fundamental reforms”, notably democracy, the rule of law and curbing of corruption. This cluster will be opened first and closed last. Progress under this cluster will affect decisions to open and close other clusters and chapters.

While the truly fundamental elements here relate to democracy and the rule of law, the picture is confused by including in this cluster other chapters such as statistics, which while important hardly rank as fundamental.

Negotiating chapters and clusters. The core operational content of the Framework is the listing of 6 ‘clusters’ of broad policy domains and their 33 (plus 3 that are unnumbered) constituent ‘chapters’ for implementation of EU law (see Annex), and the procedures for opening and closing each of them.

The operational procedures are exceedingly complex and burdensome, all the more so since each of the 70+ steps for agreeing to negotiation chapter benchmarks has to be decided by unanimity of member states in the Council. Widespread recommendations by virtually all independent experts and a ‘group of friends’ of member states that the intermediate steps be switched to qualified majority voting (or ‘super’ QMV) have failed to be implemented. Nothing is known in public about whether the Commission made proposals to this effect and, if so, how much support this gained from other member states, and which others were blockers.

The first step is the ‘screening’ by the Commission of the various degrees of compliance at the outset with the EU law under each chapter. This leads into definition of ‘benchmark’ requirements for the opening each cluster and its constituent chapters, to be agreed by the Council unanimously.

The ‘fundamentals cluster’, to be opened first and closed last, will be subject to a specific procedure. The ‘opening benchmarks’ will be based on proposals by the candidate of ‘roadmaps’ defining reform priorities, and decided by the Council by unanimity. Once the Council is satisfied that the ‘opening benchmarks’ have been met, the Council will adopt a second set of ‘interim benchmarks’. Once the Council is satisfied that these ‘interim benchmarks’ have been met, it will lay down, again by unanimity, an ‘interim position’ defining ‘closing benchmarks’ for the fundamentals cluster as a whole. When the Council is satisfied that the ‘closing benchmarks’ have been met it will decide, yet again by unanimity, on the provisional closure of the fundamentals cluster.

For other clusters the procedure is similar but somewhat simpler, since the ‘roadmap’ step is not foreseen. Anti-corruption policies will be mainstreamed in all relevant chapters, which will not be closed unless sufficient anti-corruption policies are implemented in each such chapter.

The system of benchmarks could be much simplified without changing the substance of the process, as has been proposed². The lists of EU laws, standards and norms that have to be adopted is well established, as exemplified by the annexes to the DCFTAs with Ukraine and Moldova, subject to their updating and completion. Degrees of compliance can be rated, as the Commission already does in its annual ‘Enlargement Package’ reports. The ratings system provides the obvious basis for defining more simply the benchmarks for open and closing clusters/chapters.

2 <https://www.ceps.eu/ceps-publications/template-2-0-for-staged-accession-to-the-eu/>

Reversibility. Adding to the prior methodology, the negotiations can be suspended. in the case of “serious and persistent breach” of EU values. The text goes into more detail about the case of prolonged stagnation or backsliding on the fundamentals cluster, with a procedure under which this failing can lead to withholding the opening or closing of other clusters or chapters. Financial assistance may also be reduced.

Transitional measures. The candidate state may request transitional delays in implementing specific policies, provided they are “limited in time and scope”. These are typically limited to a few years.

Transitional measures may also be agreed to “in the interests of the Union” without this ominous phrase being further defined. The possible cases of free movement of workers, structural policies and agriculture are cited. The most recent accessions of Bulgaria, Romania and Croatia saw member states entitled to opt for up to seven-year full implementation delays for the free movement of labour. For Ukraine agriculture has already seen serious tensions especially in Poland and other central European member states, resulting in temporary limitations of imports of various cereals from Ukraine.

As has been the case for recent accessions, the candidate will not join the euro and Schengen areas when becoming a member state, but later depending on rigorous conditions.

Closer, gradual, phased-in and accelerated integration prior to accession. These overlapping terms are introduced, complementing but not changing the formal accession methodology for the opening and closing of clusters and chapters. The idea has gained ground over the last few years that the accession process, being so long, should deliver partial benefits along the way before full accession. In its opening statement at the IGC, the EU put a marker on sectoral integration in the EU internal market, ‘whilst safeguarding its integrity’, along pathways identified in the DCFTAs. Yet, in the negotiating frameworks, the focus is wider, i.e. on areas of ‘mutual strategic interest’ and/or where there is a ‘vast untapped potential’ and the candidate country has significant production but needs to meet EU norms and standards. Defence industrial cooperation comes to mind as an obvious ‘win-win’ area for accelerated integration.

More strongly structured and operational proposals for reform of the enlargement methodology have been advanced by independent sources under the heading of ‘Staged Accession’³, but the Framework does not go beyond repeating various looser ideas for ‘gradual’ integration.

Missed chances. The EU Council here failed to take the opportunity to improve the accession methodology in response to widespread criticisms and proposals for reform.

Widespread recommendations for reform of the EU Council’s decision-making process are ignored, notably to reduce the requirement of unanimity in the Council for each and every step, however technical.

The opportunity was not taken to clean up various confusing aspects of the list of clusters and chapters (various chapters in the fundamentals cluster are hardly fundamental).

3 Footnote 2.

The idea of gradual integration before accession is intended to introduce a new positive dynamic to the process, but its formulation by the Commission lacks any formal link for advancing the opening or closing of chapters/clusters. As such one may suspect that some member states may see this as a substitute for real progress under the formal procedures.

Recommendations

The candidate states should take these Negotiating Framework documents as a fresh stimulus to advance the huge number and complexity of measures required to comply with EU laws, values and policies.

The forthcoming renewed leadership of the Commission should in its first months include the enlargement methodology in their policy reviews, and propose to adapt the Negotiating Framework documents to relax the decision-making modalities and make the accession process simpler without losing its substantive requirements. Nothing would be lost by making such adjustments in a few months time.

Clusters of negotiating chapters / themes

1. Fundamentals	23 – Judiciary and fundamental rights 24 – Justice, Freedom and Security - Economic criteria - Functioning of democratic institutions - Public administration reform 5 – Public procurement 18 - Statistics 32 - Financial control
2. Internal Market	1 - Free movement of goods 2 - Freedom of movement for workers 3 - Right of establishment and freedom to provide services 4 - Free movement of capital 6 - Company law 7 - Intellectual property law 8 - Competition policy 9 - Financial services 28 - Consumer and health protection
3. Competitiveness and inclusive growth	10 – Digital transformation and media 16 – Taxation 17 – Economic and monetary policy 19 – Social policy and employment 20 – Enterprise and industrial policy 25 – Science and research
4. Green agenda and sustainable connectivity	14 - Transport policy 15 - Energy 21 - Trans-European networks 27 - Environment and climate change
5. Resources, agriculture and cohesion	11 - Agriculture and rural development 12 - Food safety, veterinary and phytosanitary policy 13 - Fisheries and aquaculture 22 - Regional policy & coordination of structural instruments 33 - Financial & budgetary provisions
6. External relations	30 - External relations 31 - Foreign, security & defence policy

Source: references in footnote 1.



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