

THE OBLIGATION TO ACCEPT AQUIS COMMUNAUTAIRE: SOME THOUGHTS ON UKRAINE'S ACCESSION TO THE EU AND VALUE OF THE RULE OF LAW

Introduction. The issue of Ukraine's accession to the European Union has taken on new importance in the wake of Russia's unlawful and unjustified aggression against Ukraine in February 2022. This new situational context has highlighted the need for a comprehensive examination of the complexities involved in Ukraine's accession to the EU, prompting numerous scholarly studies on this multifaceted issue³. Our study aims to contribute to this body of knowledge, offering insights into specific challenges and considerations related to Ukraine's future EU membership.

Titled "The Obligation to Accept Aquis Communautaire: Some Thoughts on Ukraine's Accession to the EU and value of the rule of law" our article delves into the issue of aligning Ukrainian legislation with the standards of the EU's legal framework. This task, in and of itself, poses a significant challenge due to the unique circumstances faced currently by Ukraine as a country. In our reflections, we have chosen to focus on the issue of the rule of law. The centrality of the rule of law is gaining critical importance in the current discourse, especially in light of growing concerns within the European Union about the current member states' compliance with this fundamental principle⁴.

The rule of law stands as a cornerstone of the European Union, serving as one of its core values upon which the community is built. The enduring strength and growth of the EU hinge upon the shared commitment to certain values by its member states. It is therefore crucial for aspiring countries to comprehend the significance of these values and exhibit determination to develop and defend them, as outlined in Article 2 of the Treaty on European Union. Consequently, countries seeking to join the EU must demonstrate their compliance with and dedication to upholding the EU values and among them the rule of law.

To ensure a comprehensive exploration of the topic at hand, our article will be structured into two sections. We believe that an understanding of the intricate matter concerning the rule of law in the context of a new state's accession to the EU necessitates providing a broader contextual backdrop encompassing the membership conditions stipulated in the treaties. By outlining this broader perspective, we aim to

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³ In this regard, see e.g.: D. Kochenov, R. Janse, *Admitting Ukraine to the EU: Article 49 TEU is the 'Special Procedure'*, „EU Law Live”, March 30, 2022; P. Van Elswege, G. Van der Loo, *The EU-Ukraine Association Agreement as a Stepping-stone towards EU Membership?*, „EU Law Live”, 28 March 2022; W. Kirsch, *The distribution of power within the EU: perspectives on a Ukrainian accession and a Turkish accession*, „Int. Econ. Econ. Policy” (2022) 19, pp. 401–409; Roman Petrov, *The Impact of the Russian Invasion of Ukraine on Its Accession to the EU* Max Planck Law Perspectives (27 January 2023), <https://law.mpg.de/perspectives/the-impact-of-the-russian-invasion-of-ukraine-on-its-accession-to-the-eu/>, (accessed on 21.07.2023).

⁴ In this regard, see e.g.: L. Pech, K. L. Scheppele, *'Illiberalism Within: Rule of Law Backsliding in the EU'*, 19 *Cambridge Yearbook of European Legal Studies* (2017) p. 3; T. Konstadinides, *The Rule of Law in the European Union. The Internal Dimension* (Hart Publishing 2017); T.T. Koncewicz, *Understanding the Politics of Resentment. Of The Principles, Institutions, Counter-Strategies and ... the Habits of Heart*, 26 *Indiana Journal of Global Legal Studies* (2019) p. 501.

effectively contextualize the subsequent examination of the rule of law, offering readers a comprehensive view of the subject matter.

The initial section of our article will address the fundamental aspects of the accession process of a new country to the European Union. Firstly, we will provide a general overview of the criteria and conditions under which a country can become a member of the EU. Subsequently, we will succinctly outline the procedural aspects involved in the application process as outlined in the relevant treaties. Moreover, we will delve into the concept of immediate and full adoption, elucidating its significance, while also exploring the associated transitional measures that hold particular relevance for the aspiring member state.

In the subsequent section, our attention will be directed toward the specific requirements that Ukraine needs to fulfill regarding the rule of law. Primarily, we will emphasize the challenges identified in the Commission's Opinion on Ukraine's application for EU membership, assessing how they correspond to the rule of law issues that have emerged within the Union itself in recent years. By examining this juxtaposition, we aim to shed light on the compatibility of Ukraine's rule of law framework with the EU's standards and provide an insightful analysis of the subject matter. Following the direction set by the opinion we will explore the necessary reforms and adjustments required to align Ukrainian legislation with EU standards, emphasizing in particular the effective functioning of the independent and impartial judicial institutions.

By shedding light on these challenges, our study aims to contribute to the ongoing discourse on Ukraine's accession to the EU, providing insights into the complex interplay between legal harmonization, democratic governance, and the rule of law. Through the examination of these issues, we hope to foster a deeper understanding of the road ahead for Ukraine as it endeavors to fulfill the requirements for EU membership and contribute to the shared values and aspirations of the European community.

I. Accession process of a new country to the European Union

1. Who can join the club- material conditions. The legal basis for the admission of a new Member State to the European Union is Art. 49 TEU, which indicates the material and formal conditions for applying for membership. It states that any European country can apply for membership (including any country with some, even minimal territory on the European continent). Above all, such a state must respect the common values on which the Union is based, such as respect for human dignity, freedom, democracy, equality, the rule of law, and respect for human rights. In addition to the treaty criteria, a state must, as a potential member, fulfill the so-called Copenhagen criteria.

The Copenhagen European Council set out certain criteria in 1993 which were later reinforced by the Madrid European Council in 1995. These criteria are primarily concerned with ensuring the stability of institutions that uphold democracy, the rule of law, and human rights while also respecting and safeguarding minorities. Additionally, countries must have a functional market economy that can meet the demands of the internal market and be prepared to adopt the entire *acquis communautaire* (AC). According to the EU's term glossary: The *acquis* is the body of common rights and obligations that is binding on all the EU member states⁵. It is constantly evolving and comprises the content: principles and political objectives of the Treaties; legislation adopted under the Treaties and the case law of the Court of Justice; declarations and resolutions adopted by the Union; instruments under the Common Foreign and Security Policy International agreements concluded by the Union and those entered into by the member states among themselves within the sphere of the Union's activities. The term occurs in almost all documents relating to the enlargement of the Union, and the phrase *acquis communautaire* remains untranslated even in English language versions of documents. This concept has received its official- confirmation, as the Maastricht Treaty placed it at the very core of Union primary law and is present in official texts and academic writing.⁶

2. The application procedure. The application procedure starts when a candidate country applies to the Council, after informing the European and national parliaments. Practice shows that such a request is submitted after receiving a political impulse from the European Council, which indicates the Union's

⁵ https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/glossary/acquis_en

⁶ Christine Delcourt, *The Acquis Communautaire: Has the Concept Had Its Day*, "Common Market Law Review" 2001, vol 38, Issue 4, pp. 829-870.

readiness to expand. Before making a decision, the Union Council requests for the European Commission to prepare an opinion, commonly known as an avis. The Council, after receiving the opinion, decides unanimously on the opening of accession negotiations. In practice, negotiations are conducted by representatives of the Commission, acting under the authority of the Council on the one hand and a representative of the Member State on the other. The purpose of the working negotiations is to come to a common position to be presented to the representatives of the states for approval.

In the first stage of negotiations a review of the law- called screening- is carried out. It aims to verify in which areas EU law and national law coincide and in which they do not. Only after determining the area of interest for the negotiations, the actual negotiations are started to prepare a common position to be presented to the Council. The final step in the process is the preparation of the accession treaty, which is an international agreement between the Member States and the applicant country. Such an agreement is subject to ratification in all Member States by their constitutional requirements. The European Union has gone through seven rounds of enlargement to date. These include the years 1973 (when Denmark, Ireland, and the United Kingdom joined), 1981 (Greece), 1986 (Spain and Portugal), 1995 (Austria, Finland, and Sweden), 2004 (Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia), 2007 (Bulgaria and Romania), and 2013 (Croatia).

Each year the Commission adopts its enlargement package, an essential set of documents that comprehensively detail the Commission's position on EU enlargement. One of the crucial documents included in the package is the communication on enlargement, which provides an in-depth analysis of the current state of the candidate countries and potential candidates, as well as plans for enlargement. Furthermore, the package comprises reports that meticulously evaluate the progress made by each country towards enlargement, offering a thorough yearly assessment. In 2020 European Commission proposed in the context of Western Balkans enlargement the new approach to the accession process. The EC has underlined that is the need to: 'build more trust among all stakeholders and to enhance the accession process and make it more effective'⁷. In the year 2022, presenting an enlargement package⁸, Commissioner for Neighbourhood and Enlargement, Olivér Várhelyi, said: "The enlargement policy of the European Union is a geostrategic investment in our European continent's peace, stability, security, and socio-economic growth⁹. The war in Ukraine has started the discussion on speeding up the European integration of the Western Balkans but it also opens a new approach to the accession process.

3. The principle of immediate and full adoption -Immediate Effect of Community Law in the New Member States. The fundamental principle that "governs" the Accession Treaty is the principle of the immediate effect of Community Law, which means that the acceding country must adopt the entire EU acquis. AC comprises the EC's objectives, substantive rules, policies, and, in particular, the primary and secondary legislation and case law – all of which form part of the legal order of the European Union (EU). This includes all the treaties, regulations, and directives passed by the European institutions, as well as judgments laid down by the European Court of Justice. The acquis is dynamic, constantly developing as the Community evolves. The term is most often used in connection with preparations by candidate countries to join the Union. They must adopt, implement and enforce all the acquis to be allowed to join the EU. As well as changing national laws, this often means setting up or changing the necessary administrative or judicial bodies.

The principle of immediate effect of community law in the new Member States has a dual role in the accession process. Firstly, it establishes the starting point for negotiations. The negotiations are confined to the establishment of derogations rather than the negotiation of existing rules. Secondly, this principle follows the rule that the consequence of accession, in the absence of an explicit derogation in the accession treaty, is acceptance of the system as accepted by the existing Member States.¹⁰ This principle has various legal implications. Its adoption means fully accepting all present and potential rights and

⁷ Communication of the Commission, Enhancing the accession process - A credible EU perspective for the Western Balkans, Brussels, 5.2.2020 COM(2020) 57 final.

⁸ COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS, 2022 Communication on EU Enlargement Policy, Brussels, 12.10.2022 COM(2022) 528 final

⁹ European Commission press release, 2022 Enlargement package (europa.eu)

¹⁰ S.L.Kaleda, *Przyjęcie prawa wspólnotowego przez nowe państwo członkowskie, zagadnienia przejściowe oraz międzyczasowe*, Warszawa 2003, p.77.

obligations under the Union system. It also means that the state cannot question existing political and legal arrangements, and the Union retains its legal identity. As Kaleda¹¹ explains, joining the EU grants a state all the same rights and obligations as the previous parties to it. This is in fact, a legal fiction where the state is assumed to have been part of the organization from the beginning, despite not participating in previous arrangements. EU law automatically applies in the new state, and the accession treaty only establishes exceptions to this principle.

Accession treaties provide for exceptions to the principle of immediate effect of community law, either in the form of permanent derogations or temporary derogations. Such derogations must not undermine the Union's identity, and must not introduce changes to established Union policies. Transitional measures, as the name suggests, constitute a postponement of the application of the principle of immediate and full adoption in certain well-defined areas. This means that during the transitional periods, an increased role of national law is allowed. Temporary derogations are typical of the adoption of new regulations as a result of accession, while permanent derogations are related to the difficulty of accepting a certain part of the *acquis*. Temporary derogations simply postpone the application of a standard, whereas permanent derogations change the scope of the application of a standard¹². The principle of immediate adoption is based on the principle of equality - the same rules apply to all members of the Community, any derogation distorts this equality. Therefore, derogations established upon accession must not undermine the identity of the Union and must not introduce permanent changes to existing regulations.

Transitional measures are always limited in time, by setting specific deadlines, and are accompanied by a plan setting out the next steps in the implementation of EU law. Permanent derogations are allowed but under very restrictive conditions. Firstly, no permanent changes to primary law can be made in the Accession Treaty, the inclusion of derogations in primary law requires a compromise to be reached between all Member States, and therefore depends very much on political considerations and is very difficult to achieve and can set a dangerous precedent for the future. In the case of secondary law, permanent derogations are possible and usually take the form of technical adaptations, for example as lists of exceptions provided for in directives. Permanent derogations may also be introduced due to specific features of the economy of an acceding state or due to certain traditions, or practices of an acceding state, as long as they do not concern matters fundamental to Union law and their introduction will not disturb the functioning of the common market. The purpose of these measures is to facilitate the adaptation of new countries to the rules in force in the EU (an example of the use of this instrument was, for example, the introduction of a transitional period for the purchase of land in Poland after accession to the EU or the temporary closure of some labor markets of the so-called "old 15" EU). A well-known example of permanent exclusion is – snus, which is a smokeless tobacco product. It is a moist snuff that is placed under the lip for extended periods, very popular in Sweden. The sale of snus is illegal in the European Union. Sweden is the only country in the EU that is exempt from this ban, it gained an exemption when joining the bloc in 1995.

4. Ukraine's admission to the EU in the context of the Rule of Law value. Having outlined „the Copenhagen criteria” as the fundamental prerequisites for any country aspiring to join the European Union, we now turn our attention to one of these key conditions: the rule of law. This principle, while seemingly straightforward, encompasses several different issues that are crucial to the functioning of a democratic society. In the context of Ukraine's EU accession, the rule of law presents both a challenge and an opportunity for reform and progress. In the following sections, we will focus on this principle, examining its role in Ukraine's quest for EU membership and the specific issues that need to be addressed in this context. Our analysis will be anchored in the Commission's Opinion on Ukraine's application for EU membership, specifically the section addressing the rule of law. We will present this material and try to enrich it with our observations and reflections, drawing upon Poland's experiences in this regard.

The Opinion on Ukraine's accession to the EU on the rule of law focuses on three key aspects¹³. Firstly, it scrutinizes the functioning of the judiciary, emphasizing its independence from other branches

¹¹ Ibidem, p. 82

¹² C. Mik, *Europejskie Prawo Wspólnotowe*, Warszawa 2000, p. 324.

¹³ COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE EUROPEAN COUNCIL AND THE COUNCIL, *Commission Opinion on Ukraine's application for membership of the European Union*, COM/2022/407 final, pp. 8-12.

of government by the principle of separation of powers, and the integrity and impartiality of judges¹⁴. Secondly, it highlights the fight against corruption as a significant challenge, particularly within the context of Ukraine¹⁵. Lastly, it underscores the difficulties associated with countering organized crime¹⁶. Drawing from Poland's recent experiences with challenges in the realm of the rule of law, we aim to concentrate our focus on the principle of the rule of law as it pertains to the judiciary. We will particularly delve into the facets of judicial independence, impartiality, and the autonomy of judges. This focus is informed by our understanding that these elements are fundamental to the effective functioning of the rule of law.

In its Opinion, the Commission first refers to the High Council of Justice in Ukraine. The Council, established in 2017, assumed the responsibility of appointing judges, a function previously held by the Parliament (Verkhovna Rada)¹⁷. This shift was purportedly designed to eliminate any political influence from the appointment process. The HCJ holds a paramount and influential position within Ukraine's judicial system. It wields the authority to appoint and dismiss judges, administer disciplinary actions, decide on temporary suspensions, and authorize the arrest of judges¹⁸. The Council has the final say on judicial candidates and forwards a list of judges to the president. Upon receiving this list, the president is obligated to confirm the appointment of these judges within a 30-day timeframe. The Commission points out that while the Council operates within a constitutional and legislative framework that guarantees the independence and impartiality of the courts, concerns remain about excessive internal and external interference¹⁹.

The Commission commends Ukraine for several crucial steps taken toward judicial reform. The first round of reforms in 2016, culminating in constitutional amendments, streamlined the court system by reducing it from four to three tiers²⁰. Additionally, new examinations and integrity checks were imposed on all incumbent judges. These measures led to the resignation of more than a quarter of the judicial corps, about 2000 judges. A more transparent process was introduced for judicial appointments, which were now open to the entire legal profession²¹.

An important milestone in the judicial system was the establishment in 2019 of the High Anti-Corruption Court²², facilitated by the active involvement of Ukrainian civil society and the international community²³.

On the other hand, the Commission identifies several challenges facing Ukraine's judicial system. The judiciary is currently severely understaffed²⁴. While new Supreme Court members were nominated transparently, the appointment of some judges with questionable integrity raises concerns. Despite the efforts to reform and improve the judicial system, these challenges highlight the need for further improvements and reforms to ensure a trustworthy judicial system²⁵.

The Commission appreciates several critical aspects of Ukraine's ongoing judicial reforms. Notably, the country was on the brink of completing a fundamental judicial reform (2020-2022) that, if fully implemented, could lead to significant systemic changes. The essence of these reforms is encapsulated in a comprehensive Strategy for the Development of the Justice System and Constitutional Judiciary for 2021-2023²⁶. There is also acknowledgment of the mixed, but overall positive, trend in the efficiency of civil and commercial proceedings²⁷.

¹⁴ Ibidem, pp. 8-9.

¹⁵ Ibidem, pp. 9-11.

¹⁶ Ibidem, pp. 11-12.

¹⁷ *Ukraine's Judicial Institutions: A Primer*, Temerty contemporary Ukraine program at Harvard University, <https://huri.harvard.edu/ukraine-judicial-institutions> (accessed on 20.VII.2023)

¹⁸ <https://verfassungsblog.de/judicial-reform-in-times-of-war/>

¹⁹ *Commission Opinion on Ukraine's application for membership...*, p. 8.

²⁰ Ibidem, p. 8.

²¹ Ibidem, p.8.

²² For more on this court from the international perspective see: I. Zabokrytsky, *Transnational Civil Society Influence on Anti-Corruption Courts: Ukraine's Experience*, „Global Jurist” (2020), vol. 20, no. 1.

²³ *Commission Opinion on Ukraine's application for membership...*, p.8.

²⁴ On this topic see also: *Corruption prevention in respect of members of parliament, judges and prosecutors, INTERIM COMPLIANCE REPORT UKRAINE*, Adopted by GRECO at its 93rd Plenary Meeting (Strasbourg, 20-24 March 2023), p. 14.

²⁵ *Commission Opinion on Ukraine's application for membership...*, p.8.

²⁶ On this topic see also: O. Bandar, V. Teremetskyi, V. P. Boiko, O. Zubov, V. Patlachuk, *Current Situation of Judicial Reform in Ukraine: Problems and Ways of Their Solution*, „Lex Humana” (2023), Vol. 15, No. 4.

²⁷ *Commission Opinion on Ukraine's application for membership...*, p.9.

On the other hand, there remain significant challenges. The judiciary continues to be one of the least trusted institutions. A major issue is the overwhelming backlog of cases, especially those under the jurisdiction of the Supreme Court. The allocation of resources is also a concern, with a significant chunk of the court's budget spent on salaries and compensations, leaving little for investment and training needs²⁸. Moreover, Ukraine lags behind the European average in terms of judges per capita, although it exceeds the average for prosecutors²⁹.

The adoption of new legislation introducing integrity and professional ethics checks for key judicial governance bodies is lauded. The suspension of these checks due to the war and the subsequent continuation, which led to a major reshuffle of the High Council of Justice, is also notable. According to the Commission, these reforms have significant potential to foster an independent and accountable judiciary and mitigate the undue influence of vested interests³⁰.

To address the chronic issue of non-enforcement of court decisions, the Government adopted a Strategy in 2020, followed by the Parliament adopting a draft law reforming the enforcement of court decisions in 2021. The Commission also acknowledges the ambitious reform of the prosecution service initiated at the end of 2019, which involved vetting all prosecutors based on professionalism and integrity criteria. However, the high rate of failure and ensuing court cases present a challenge. The ongoing efforts to formalize a transparent, merit-based selection process for management-level prosecutors, and to improve the disciplinary system for prosecutors, are seen as positive steps³¹.

Reading the Commission's Opinion on rule of law issues in the context of Ukraine's accession to the European Union is particularly poignant for those who have been following the discourse surrounding this value within the EU in recent years. These years have been marked by challenges to the rule of law, primarily involving not the candidate countries, but the active members of the EU. Judicial reforms, especially those undertaken in Hungary and Poland, have sparked significant controversy in terms of the standards that the EU upholds in the realm of the rule of law³². Numerous EU institutions, with the Court of Justice of the European Union (CJEU) at the forefront, have underscored the importance of the rule of law as a fundamental criterion for EU membership³³.

The ongoing discourse about the rule of law underscores that the EU is, above all, a community bound by shared values. Adherence to these values is a fundamental prerequisite for membership in this unique community. Countries aspiring to join the Union must not only understand the core values upon which the Union is founded but also demonstrate a commitment to uphold and defend them. This is especially important in the context of how the rule of law is defined in the European Union. The value of the rule of law in the most general manner, makes sure that all public powers act within the constraints set out by law, by the values of democracy and fundamental rights, and under the control of independent and impartial courts³⁴.

In its communication on a new EU framework to strengthen the Rule of Law issued in 2014, European Commission outlined that the rule of law holds a distinctive place of importance within the European Union, as it is not only a fundamental requirement for safeguarding all the core values outlined in Article 2 of the Treaty on European Union but also a necessary condition for maintaining all rights and obligations that arise from the Treaties and international law³⁵.

The Commission pointed out that the trust of all EU citizens and national authorities in the legal systems of all other Member States is crucial for the EU to function, especially taking into account that judgments in civil and commercial matters from a national court in one Member State must be

²⁸ *Ibidem*, p.9.

²⁹ *Ibidem*, p.9.

³⁰ *Commission Opinion on Ukraine's application for membership...*, p.9.

³¹ *Ibidem...*, p. 9.

³² On this topic, see, among others: D. Kochenov, L. Pech, *Upholding the rule of law in the EU: on the Commission's 'pre-article 7 procedure' as a timid step in the right direction*, EUI RSCAS, 2015/24.

³³ See among others: ECJ 25 July 2018, C-216/18, *PPU - Minister for Justice and Equality*; ECJ 5 November 2019, C-192/18, *European Commission v Republic of Poland*; ECJ 24 June 2019, C-619/18, *European Commission v Republic of Poland*; ECJ 26 March 2020, Joined Cases C-558/18 and C-563/18, *Miasto Łowicz and Prokurator Generalny*, paragraphs from 31-37; ECJ 2 March 2021, C-824/18, *A.B. and Others v Krajowa Rada Sądownictwa and Others*; ECJ 15 July 2021, C-791/19, *European Commission v Republic of Poland*, para 50-51; ECJ 13 January 2022, C- 55/20, *Minister Sprawiedliwości*.

³⁴ COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL A new EU Framework to strengthen the Rule of Law, p. 4

³⁵ *Ibidem*, p. 4

automatically recognized and enforced in another Member State. Similarly, for example, a European Arrest Warrant issued against an alleged criminal in one Member State must be executed in another Member State³⁶. These instances underscore the importance of mutual respect for the rule of law among all the Member States. If the principle of the rule of law is not fully upheld in one Member State, it becomes a matter of concern for all³⁷.

It is for this reason that issues of judicial independence and the impartiality of judges are so important for functioning within the European Union daily. This is also why the CJEU is so clear in its case law in highlighting the importance of judicial independence, which requires that the court exercise its functions wholly autonomously, without being subject to any hierarchical constraint or subordinated to any other body and without taking orders or instructions from any source whatsoever³⁸. This is to protect against external interventions or pressure liable to impair the independent judgment of its members and to influence their decisions³⁹.

In this context, implementing comprehensive judicial reforms and ensuring the independence and impartiality of the judiciary serve as fundamental pillars for membership in the European Union, a community deeply rooted in shared values, among which the rule of law is of considerable importance. Therefore, adapting to EU standards in the area of the rule of law for Ukraine, although a great challenge, is also a unique opportunity to build institutions on which a well-functioning state will rely for decades to come.

5. Conclusions. In conclusion, our analysis underscores the centrality of the rule of law in the context of Ukraine's potential accession to the European Union. The rule of law is not merely a theoretical concept but a practical necessity that underpins all aspects of EU membership. It is a cornerstone of the EU's identity and a prerequisite for the functioning of its internal market and judicial cooperation mechanisms. That article aimed to underline the role of the rule of law in the accession process. As A. Łazowski said: Rule of law conditionality is now omnipresent as soon as countries express a desire to join the European Union.⁴⁰

The challenges that Ukraine faces in aligning its legal and judicial systems with EU standards are significant but not insurmountable. The country's progress in this area will be a key determinant of its readiness for EU membership. Ukraine must continue to prioritize judicial reforms and the strengthening of rule of law institutions.

Moreover, the EU must remain steadfast in its commitment to the rule of law as a fundamental value and a prerequisite for membership. The experiences of member states like Hungary and Poland underscore the importance of this commitment. The question arises if the Commission in the enlargement process is capable to ensure that the rule of law is truly embedded in future Member states⁴¹. The EU's response to rule of law backsliding within its borders will inevitably shape its credibility in insisting on strict adherence to the rule of law from candidate countries.

Finally, it is crucial to remember that the rule of law is not just a hurdle to be overcome in the accession process, but a fundamental principle that will shape Ukraine's political, economic, and social landscape for years to come. The process of aligning Ukraine's legal system with EU standards is not just about meeting membership criteria, but about building a stronger, more democratic, and more just society. The rule of law is a shared value that binds the member states together, and its respect and protection will be crucial for the future of the Union. As Ukraine continues on its path toward EU membership, the rule of law will undoubtedly remain at the heart of this journey.

³⁶ In this context, see in particular the CJEU ruling of July 25, 2018, C-216/18, PPU - Minister for Justice and Equality.

³⁷ COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL A new EU Framework to strengthen the Rule of Law, p. 4-5.

³⁸ Judgment of the Court of 5 November 2019, European Commission v Republic of Poland, C-192/18 par. 119

³⁹ Judgments of 27 February 2018, Associação Sindical dos Juizes Portugueses, C-64/16, EU:C:2018:117, paragraph 44 and the case-law cited, and of 24 June 2019, Commission v Poland (Independence of the Supreme Court), C-619/18, EU:C:2019:531, paragraph 72.

⁴⁰ A. Łazowski, *Strengthening the rule of law and the EU pre-accession policy: Republika v. Il-Prim Ministru*, the Common Market Law Review 59 (6), pp. 1803-1822 on 18 November 2022

⁴¹ See more in that respect: L. Louwerse, E. Kassoti, *Revisiting the European Commission's Approach Towards the Rule of Law in Enlargement*, Hague Journal on the Rule of Law (2019) 11:223-250

Міхалак М., Снядач О. Зобов'язання прийняти *Aquis Communautaire*: кілька думок про вступ України до ЄС та цінність верховенства права

У цій статті розглядається актуальне питання потенційного вступу України до Європейського Союзу після незаконної агресії Росії проти України в лютому 2022 року. Автори стверджують, що поточний контекст вимагає всебічного вивчення складнощів, пов'язаних з Україною на шляху до членства в ЄС, зокрема зосередження на верховенстві права як центральному та критичному аспекті. Верховенство права є наріжним каменем Європейського Союзу, і дотримання цього принципу є основоположним для спільних цінностей та успішного зростання ЄС. Очікується, що країни-кандидати, включно з Україною, продемонструють відданість підтримці цінностей ЄС, як зазначено в статті 2 Договору про Європейський Союз. У цій статті розглядаються проблеми, з якими стикається Україна під час узгодження свого законодавства з правовою базою ЄС, з особливим наголосом на верховенстві права.

Для забезпечення ширшого контексту структура статті умовно включає два розділи. У першому розділі викладено загальні критерії та умови членства в ЄС, включаючи процедурні аспекти процесу подання заявки та концепцію негайного та повного прийняття. У цьому розділі також підкреслюється важливість перехідних заходів для таких країн-кандидатів, як Україна. Наступний розділ присвячений конкретним вимогам верховенства права, які має виконати Україна. Спираючись на висновок Комісії щодо заявки України на членство в ЄС, автори оцінюють сумісність системи верховенства права України зі стандартами ЄС. Досліджуючи виклики, з якими зіткнувся сам ЄС протягом останніх років, стаття містить глибокий аналіз потенційного узгодження України з вказаним вище принципом ЄС.

Дослідження наголошує на необхідних реформах та коригуваннях українського законодавства для відповідності стандартам ЄС, з особливим акцентом на ефективне функціонування незалежних та неупереджених судових інституцій. Автори вважають, що висвітлення цих завдань сприятиме поточному дискурсу щодо вступу України до ЄС, сприяючи глибшому розумінню взаємозв'язку між правовою гармонізацією, демократичним врядуванням і верховенством права.

Загалом ця стаття пропонує доволі цінне розуміння складності прагнень України до членства в ЄС і підкреслює важливість верховенства права як центральної опори процесу інтеграції. Роблячи внесок у сукупність знань з цього багатогранного питання, дослідження має на меті допомогти Україні виконати вимоги для членства в ЄС, одночасно зміцнюючи спільні цінності та прагнення європейської спільноти.

Ключові слова: *acquis communautaire*, *avis*, Європейський Союз, регламенти, директиви, вступ до ЄС, право співтовариства, імплементація, Договір про приєднання, верховенство права, вступ до ЄС, судова реформа, стандарти ЄС, країни-кандидати.

Michalak M., Śniadach O. The Obligation to Accept *Aquis Communautaire*: Some Thoughts on Ukraine's Accession to the EU and value of the rule of law

This article examines the pressing issue of Ukraine's potential accession to the European Union in the aftermath of Russia's unlawful aggression against Ukraine in February 2022. The authors assert that the current context necessitates a comprehensive examination of the complexities involved in Ukraine's path to EU membership, mainly focusing on the rule of law as a central and critical aspect. To provide a broader context, the article's structure conditionally includes two sections. The initial section outlines the general criteria and conditions for EU membership, including the procedural aspects involved in the application process. This section also highlights the significance of transitional measures for aspiring member states like Ukraine. The subsequent section focuses on the specific rule of law requirements that Ukraine must fulfill.

The study emphasizes the need for necessary reforms and adjustments in Ukrainian legislation to meet EU standards, focusing on the effective functioning of independent and impartial judicial institutions. The authors believe that shedding light on these challenges will contribute to the ongoing discourse on Ukraine's EU accession, fostering a deeper understanding of the interplay between legal harmonization and democratic governance. Overall, this article offers valuable insights into the complexities of Ukraine's EU membership aspirations and underscores the importance of the rule of law as a central pillar in the integration process. By contributing to the body of knowledge on this multifaceted issue, the study seeks to aid Ukraine in fulfilling the requirements for EU membership while reinforcing the shared values and aspirations of the European community.

Key words: *acquis communautaire*, *avis*, the European Union, regulations, directives, join the EU, community law, implementation, the Accession Treaty, the rule of law, admission to the EU, judicial reform, EU standards, candidate countries.

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