
The EU and Ukraine – Where to next?

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BACKGROUND

Ukraine is the EU's largest neighbouring country. It is of considerable geostrategic importance and is without doubt a European country. However, while the EU recognises the importance of the relationship and ties have considerably strengthened over the last decade, the EU continues to frustrate Kyiv by failing to develop a clear strategy for the country. It upholds a policy of "the door is neither closed nor open" by failing to offer Ukraine a clear membership perspective and is often perceived as viewing Kyiv through the prism of its relationship with Russia. For its part, Ukraine has had to live with being part of the EU's European Neighbourhood Policy (ENP) and more recently, its Eastern Partnership (EaP) initiative.

2011 is a crucial year for Ukraine. Not only is the country celebrating twenty years of independence, it is also in the final stage of negotiating an Association Agreement (AA), including a groundbreaking Deep and Comprehensive Free Trade Agreement (DCFTA) with the EU. However, a shadow has been cast on relations by the controversial court case against former Prime Minister Yulia Tymoshenko and other members of her former Cabinet, amid growing claims that democracy is retreating. With a crucial EaP Summit due to take place in Warsaw on 29-30 September, where Ukraine will figure highly on the agenda, the two partners find themselves at an important juncture in their relationship.

Ukraine's EU dream

Ukraine's desire to be a part of the EU dates back to the bloc's 1993 strategy on Ukrainian foreign policy, with the country becoming the first of the former Soviet Union to sign a Partnership and Cooperation Agreement (PCA) in June 1994. However, the decision to offer post-Soviet states PCAs, rather than regular Europe Agreements, resulted in Europe's factual division into three parts: EU members, those with a membership perspective and partners. Defining Ukraine as a 'partner' was, and remains today, a bitter pill for the country to swallow, given

that Ukrainians viewed themselves as no different from citizens of other former Warsaw Pact countries that had been separated from mainstream Europe for decades.

Furthermore, while there was much talk about wanting to be part of the EU, Ukraine's neo-Soviet elites failed to transform such rhetoric into action. Hence the first decade of Ukraine's independence produced little in the way of cooperation with the EU. Rather it was wasted with empty words and policy came under heavy Russian influence.

The 2004 Orange Revolution, which occurred soon after the EU's Eastern enlargement, opened a new page in Ukraine's history. It represented a great achievement but also a lost opportunity. Ukraine became a democratic beacon in an unruly neighbourhood; a role model for others to copy. Unfortunately, this "changing of the guard", while warmly welcomed, failed to bring about a change in the EU's approach. Brussels told Kyiv to be patient and work to get its own house in order, shamelessly offering Ukraine the same ENP Action Plan that it had negotiated with former President Leonid Kuchma. Much more could have been done even without making the prospect of accession explicit. Without 'glue' to hold them together, a short time later political infighting between the revolution's heroes – Viktor Yushchenko and Yulia Tymoshenko – crippled the country politically and economically for five years. This seriously limited Ukraine's ability to deliver reforms and served to reinforce the arguments of those opposed to Ukraine's further EU integration.

However, while the EU remained opposed to the idea of membership for the countries in its Eastern Neighbourhood, it increasingly recognised the need to increase engagement in the hope of bringing these countries closer to EU values and standards. In Ukraine, for example, the 2004 enlargement left many feeling that a new Iron Curtain had been erected a few hundred kilometres from the old one.

This resulted in the birth of the ENP. However, the shortcomings of this policy, including lack of conditionality and financial resources, and the fact that it encompassed countries from both the EU's Southern and Eastern neighbourhoods and offered no membership perspective, did not meet

Ukraine's expectations. This was followed by the EaP initiative in 2008 which aimed to supplement the ENP by putting on the table visa facilitation and liberalisation and AAs including free trade deals. All this was intended to signal a new EU engagement with Ukraine.

STATE OF PLAY

After the February 2010 presidential elections, when Viktor Yanukovich, the so-called "villain" of the Orange Revolution, was offered a second chance, deeper integration with the EU was declared a priority.

The DCFTA is the first of its kind to be negotiated by the EU and an ENP country. Its conclusion and implementation will considerably strengthen relations given that a free trade area was the first core element of integration into the EU for the nations of Central and Eastern Europe. The DCFTA will have a significant impact on the Ukrainian economy, leading to substantial inflows of capital and foreign investment. It will also facilitate Ukraine's integration into the world economy. The required reforms should strengthen competitiveness, improve the investment climate, raise labour efficiency, reduce monopolies and promote the competitiveness of Ukrainian products. From an EU perspective the Ukrainian market of 46 million consumers, huge resources and a key geographical position will be opened up to EU companies.

However, while the AA is symbolic, it is not expected to make a significant political breakthrough unless it mentions, even vaguely, a membership perspective. It is difficult to overestimate the importance of this for Ukraine. While it would not represent a watertight guarantee that Ukraine would become a star pupil overnight, it would facilitate the reform process and strengthen pro-EU forces. It would also help shape Ukraine's national identity, which remains quite weak, and its interests, as EU integration is one of the few issues that unites Ukraine's elites. From a geopolitical point of view it may help reduce Russian efforts, which have increased considerably of late, to derail Ukraine's EU aspirations in favour of closer ties with Moscow. However, with the EU focused on the economic crisis, the impact of the Arab Spring and the lack of strong leadership, the climate is far from favourable.

Visa liberalisation

At the November 2010 EU-Ukraine Summit, Kyiv finally received an Action Plan for visa liberalisation. With one in every ten Schengen visas going to a Ukrainian, it is little wonder that after membership, a visa-free regime is of great importance. However, this was offered somewhat reluctantly from the EU side, even though Ukraine unilaterally abolished visa requirements for EU citizens in May 2005.

Furthermore, the relevant EU documents still cite it as a "long-term objective".

A number of crucially important laws regarding visa liberalisation have been adopted, including laws on identity documents and refugees, while a new anti-corruption law entered into force in July. However, given poor coordination between the various Ukrainian institutions, progress has often been slow. Ukraine's own National Action Plan for Visa Liberalisation was delayed, only coming into force in April. The poor capacity of newly-created public institutions responsible for migration issues, and a lack of financial resources, have also slowed developments.

The process for preparing for a visa-free regime involves carrying out significant reforms in the security and judicial sectors, which will be beneficial for Ukraine as well as for the EU, helping to fight organised crime and strengthening border security. Progress here will be a crucial test for Ukraine's leadership, as it offers a real opportunity to prove to the population that its commitment to the EU is more than just talk. At the same time, the EU should increase its funding to strengthen the capacity of the Ukrainian institutions that serve the visa liberalisation process. More specifically, financial support should go directly to institutions responsible for visas, and not be limited to specific projects. The same approach should apply to civil society organisations. According to the Open Society Institute, the average figure for 2007-2009 represented some 0.3% of EU support. Therefore, the much discussed and welcomed Civil Society Facility should be concretely delivered.

The Warsaw EaP Summit Declaration should underline a renewed commitment to visa liberalisation, particularly in light of Arab Spring events, as well as agreeing to remove the wording "as a long-term goal" from the relevant documents. This would demonstrate that the EU is serious about its intention to establish a more ambitious partnership with its Eastern neighbours.

A disgruntled Russia

Yanukovich set out to reset relations with Moscow. While in the early days he managed to do this, not least by controversially extending the lease of the Black Sea Fleet at Sevastopol for a further 25 years, relations have since cooled.

Kyiv's decision to pursue closer economic and political ties with the EU has not been welcomed by Moscow. Russia wants Ukraine to stop the DCFTA talks and sign up to a Russian-led Customs Union with Belarus and Kazakhstan instead. While in the short-term Customs Union membership could bring some economic benefits, it will not facilitate Ukraine's integration into the world economy, but rather conserve the non-competitiveness and energy-dependence of its industry. Joining the Customs Union alone would also rule out free trade with the EU and tie future tariffs to whatever might be agreed with the other three. It would also be strategically dangerous for Ukraine to join something that has such an unclear future.

Russia has been delving into its foreign policy toolbox; threatening and introducing anti-dumping measures for popular Ukrainian goods, blackmailing (using the concept of Slavic "brotherhood") and blocking free-trade deals which are appropriate for Ukraine: like the new CIS free-trade agreement, which was re-negotiated in order to meet WTO rules. Moscow differentiates between a tough political dialogue with Ukrainian leaders and exerting cultural influence over Ukrainian citizens. In a recent address by Russian President Dmitry Medvedev "fraternal relations" with the people of Ukraine and initiatives strengthening cultural cooperation were separated from harsh criticism of Ukraine's leadership. However, recent polls conclude that only 25% of Ukrainians view Russia as a friendly country. While the majority of Ukrainians desire warm relations with Russia, they do not favour a "Russian model", preferring greater integration with the EU. Unfortunately Russia shows little interest in developing normal relations based on the principles of an equal partnership between two sovereign states.

Moscow is also stepping up pressure for the 'marriage' of Naftogas with Gazprom, proposing a "Belarusian variant for gas supply and management". If Kyiv does not comply it will shortly be forced to pay around 450\$ per 1,000 cbm thanks to the much discussed and criticised gas contract negotiated by Tymoshenko and Russian Prime Minister Vladimir Putin in 2009. Attempts by Ukrainian officials to convince Russia to change the terms have failed. In the run-up to the 2012 Russian presidential elections Moscow is displaying an all-or-nothing approach. Ukraine is presently searching for answers to this predicament.

A lot is at stake and a new gas crisis could be on the cards, which may seriously affect the EU. If Russia does not lower gas prices, Naftogas' deficit will spiral out of control, derailing IMF loan agreements. Therefore, Ukraine may be forced to increase domestic gas prices, something it has vowed not to do. This would be disastrous for the October 2012 parliamentary campaign of the Party of Regions with polls already

showing low ratings (around 20%). However, despite Russian pressure, Ukraine's leadership has demonstrated an irrevocable will to finalise the DCFTA.

Reform and Democracy

Since his election Yanukovich has launched a series of overdue, EU-demanded social, economic and administrative reforms, including laws on access to public information, public procurement, the gas sector, taxation and pension reform. It also got the IMF Standby Agreement on track, adopted a comprehensive economic policy, strengthened sectoral cooperation and entered the EU's energy community. While the EU welcomed the reforms, as going in the right direction, the European Commission's 2011 Ukraine Country Report on ENP implementation concludes that there is still much to be done. Several reforms have been unpopular and controversial (tax reform resulted in the demise of some 10,000 SMEs) and implementation remains patchy. The process needs to be carried out in a more inclusive and transparent manner in order to avoid past mistakes, such as the reinstatement of the 1996 Constitution and making changes to electoral law only weeks before the November 2010 local elections. Comprehensive judicial and constitutional reform and greater efforts to fight corruption remain crucial.

The success and continuation of this process will represent a litmus test for Ukraine's commitment to EU integration, particularly given that Kyiv is carrying out pre-accession reforms without the equivalent political or financial support.

More negatively, the Report states concerns over standards of democracy, fundamental freedoms and the rule of law. Yanukovich has been accused of eroding democracy by centralising power, while there have also been concerns about claims of intimidation of journalists and restrictions on freedom of assembly. This has been exacerbated by the on-going court case against Yulia Tymoshenko on charges of abuse of power while in office, which has been labelled politically motivated.

This offered Tymoshenko the opportunity to rise from the ashes, although it has not improved her approval ratings, which currently stand at around 13%, reflecting her failure to deliver while in office. The EU reaction was initially characterised by careful words. For instance, European Commission President José Manuel Barroso issued a statement dedicated to Ukraine's 20th anniversary of independence, declaring that "Europe wants to receive a confirmation of Ukraine's commitment to the major European values: human rights, democracy, freedoms, the rule of law, and the freedom of speech". However, following her imprisonment, and in the run-up to the court's verdict, the EU's level of disapproval of Tymoshenko has increased.

PROSPECTS

With Ukraine's image becoming increasingly tarnished Kyiv needs closure on Tymoshenko's trial. She may be released if Article 365 of the Criminal Code were to be decriminalised. This step would have two outcomes: the EU would be satisfied that Ukraine's leadership had taken onboard its criticism, while Ukraine's leadership would save face and hopefully start to focus on more serious issues. If this is not the case then the two most likely options are a jail sentence of 7 to 10 years or a suspended sentence. However, this option is usually only possible in the case of a 5-year sentence and, more significantly, would prevent Tymoshenko from taking part in the October 2012 parliamentary elections. An application for political amnesty has already been withdrawn from the Ukraine's parliament.

Tymoshenko's trial has been rescheduled for 27 September, two days before the EaP Summit. A chilly reception may await Yanukovich in Warsaw if Tymoshenko remains incarcerated. The European Peoples Party (EPP), of which the Tymoshenko bloc is a member, has already called for the Association Agreement to be postponed if she is sentenced to prison. Unfortunately, the case has been singled out, politicised and manipulated to the point where the European Parliament has almost become a second tribunal. Furthermore, given the deterioration of relations with Russia, postponing the talks would leave Ukraine increasingly isolated, which would not benefit either party.

The most likely outcome points to an initialising of the AA at the EU-Ukraine Summit scheduled for December. The DCFTA talks are supposed to be finalised earlier and signed in the spring. However, ratification by the European Parliament as well as the parliaments of all 27 Member States could be delayed, possibly until after Ukraine's October 2012 parliamentary elections. This will be crucial for assessing the country's democratic standards. While the Tymoshenko case may not stop the agreements being finalised, it would seem that unless she is released, they may be left in limbo. The EU should not allow the negotiations for visa liberalisation to be affected, and ordinary citizens should not have to pay the price for their leaders' actions.

Furthermore, it would seem unlikely that Ukraine will make a U-turn on deeper European integration, which remains very popular with Ukrainians in all regions of the country. It would be wrong to suggest that EU membership is simply a game for the government. With the nation so strongly behind it they can simply not ditch it, as that would prove costly in political terms. Ukraine should demonstrate its commitment by moving quickly to ratify the DCFTA and AA in the Ukrainian Parliament as well as pushing ahead with key political and economic reforms and adequately responding to EU calls to respect democratic values and principles. It is crucially important for Ukraine to maintain and increase democracy, which it should see as an asset.

As Ukraine increasingly democratises and takes on European values, this will not only open the door for greater cooperation with the EU, but may also have a profound and beneficial impact on Russia. If Russian society sees Ukraine becoming increasingly prosperous as a consequence of increased democracy and freedoms, it may in turn demand a change from the lawless governance under which it presently lives, benefitting the entire Neighbourhood.

The road to democracy is not straight, and the EU's newest Member States should remind themselves of the key support they received to assist with their democratisation and modernisation. Ukraine has never had this sort of back-up, and urgently requires greater support to build democracy. Implementating the AA and DCFTA can guarantee this support, giving the EU a number of tools to influence Ukraine's domestic situation. If the EU is serious about achieving the goals it has laid out in the ENP and EaP, it needs to help Ukraine to help itself.

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These issues are analysed in the EPC's Europe in the World programme. Ukraine's European integration process is one of the priorities focused on in our Eastern Partnership Project.

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