



Ukraine and the EU after the Orange Revolution

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Summary

The outcome of the disputed presidential elections in Ukraine in November 2004 is still highly uncertain. It is however clear that it will have profound consequences for the EU's relationship with Ukraine. The authors suggest the development of a three-pronged EU approach.

First, the EU needs to develop strategies to support the democratic transmission of power from President Leonid Kuchma to his successor. In the event of violence being instigated by the authorities, it is suggested that the EU immediately suspend all contacts with the Ukrainian leadership. If the Supreme Court finds that the result cannot be said to reflect the will of the Ukrainian people, new elections run by the OSCE should be considered.

Second, a strategy needs to be formulated to deal with the consequences of a victory for Prime Minister Viktor Yanukovich. It would be imperative that the EU resists the temptation to disengage with Ukraine. The EU would nevertheless need to radically change its policy, for instance by re-targeting economic aid and minimising political dialogue.

Third, a strategy needs to be formulated in the event that Viktor Yushchenko wins the presidency. In this case, the EU and Ukraine should in the short-term renegotiate the Action Plan to strengthen bilateral relations. Faced with a pro-European, credible reformist like Mr Yushchenko, with broad domestic support, the EU would in the longer term find it difficult to continue to avoid the question of Ukraine as a potential member of the EU.

Introduction

The outcome of the disputed presidential elections in Ukraine is still uncertain. It is however clear that the Orange Revolution of November 2004 will have profound consequences for Europe and the EU's relationship with Ukraine. Since the second round of presidential elections on 21 November, the Ukrainian people have shown the strength of their desire for Ukraine to be a pluralistic democracy. It is therefore essential that Europe responds with equal determination to support the aspirations of the Ukrainian electorate.

It is abundantly clear that the elections were falsified by the Ukrainian authorities. This view is now endorsed by a number of bodies ranging from the Ukrainian parliament, to the EU, EU member states, the OSCE and the US, all of which have refused to recognise Prime Minister Viktor Yanukovich as the president of Ukraine. In contrast, Russia has done so.

The next stage in the ensuing turmoil in Ukraine is unclear, as from a legal point of view, Ukraine has fallen into a political vacuum. It is apparent that the struggle between the Ukrainian authorities and the opposition is not over.

Owing to proclamations made by senior political figures in the eastern and southern regions of Ukraine for regional autonomy, the spectre of secession has arisen in Ukraine, with its potential disintegration into what observers (in the EU and US) have referred to as a 'West and East'. It needs to be emphasised that this is an oversimplification. The issue of separation is limited to the south-eastern regions of Ukraine, namely Donetsk and Luhansk oblasts, where Prime Minister Viktor Yanukovich has his power base. With a combined population of more than 7 million, or 15% of Ukraine's total population, these two regions contain much of Ukraine's natural resources. They are also the home to important industries such as steel and mining

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that have played a crucial role in the recent economic upturn in Ukraine. While these moves towards greater regional autonomy are significant, as things stand the likelihood of them leading to secession is exaggerated. The disintegration of Ukraine is improbable.

A victory for the opposition in any subsequent rounds is a likely outcome, although far from certain; a victory for the current authorities is still possible. Either way, the EU will need to develop a clear strategy on Ukraine for the immediate future and the coming months and years.

Three strategies are needed:

First, the EU needs to develop approaches to support the democratic transmission of power from President Kuchma to his successor (immediate strategy).

Second, a strategy needs to be formulated to deal with the consequences of a victory for Mr Yanukovich (or that of any other person representing the current authorities) (medium-term strategy).

Third, a strategy needs to be formulated in the event of Mr Viktor Yushchenko winning the presidency (medium- and long-term strategy).

Strategy 1: Support for the democratic transmission of power from President Kuchma to a successor

The EU's declaration issued by the Dutch EU Presidency on Monday 22 November was appropriate, and rather strong by EU standards. The declaration stated that the EU would discuss, "without delay", possible "further steps" with the OSCE chairman-in-office.¹ The declaration by the Presidency of the EU on Ukraine from 24 November 2004 was also a step in right direction in that the EU did not acknowledge the final results announced by Ukraine's Central Election Committee.

The EU should now spell out these "further steps". The EU should first of all make it clear that, in the event of violence being instigated by the authorities, it will immediately suspend all contacts with the Ukrainian leadership. A travel ban on those leaders, such as the one recently imposed on the Belarusian leadership, should be instituted and any assets held in Western banks by those involved should be frozen.

At the same time the EU needs to make it clear that the political crisis should be resolved as soon as possible and that stalling tactics on the part of Ukrainian authorities are not acceptable. The matter needs to be resolved in weeks, not months. The mediation effort by the EU's High Representative for Common Foreign and Security Policy, Javier Solana, Polish President Aleksander Kwasniewski and Lithuanian President Valdas Adamkus has been a welcome example of EU engagement in the crisis. The EU

needs to express its willingness to continue to mediate in the event of a deterioration of the situation in Ukraine.

If the review of the election process and its results by the Rada and Supreme Court finds evidence of fraud such that the result cannot be determined or said to reflect the will of the Ukrainian people, new elections run by the OSCE should be considered (the OSCE has run elections in Bosnia and could do so in Ukraine). The EU and the international community more broadly should show its willingness to participate and support these new elections, if it is decided that they are to take place.

The EU should keep Russia informed as to its opinion on Ukraine. The discussions between the Prime Minister of the Netherlands, Jan Peter Balkenende and the President of Russia, Vladimir Putin during the EU-Russia summit in The Hague were a good beginning. The EU should continue to make cooperation in Ukraine and other areas of the 'common neighbourhood' a condition for further cooperation on international security issues.

The EU's efforts to promote a democratic, peaceful solution to the political crisis in Ukraine should be coordinated with the US and Canada. A meeting of high-level officials from both sides should be considered. These efforts need to be intensified through bilateral contacts and in international organisations such as the Council of Europe, the OSCE and NATO.

Strategy 2: Reactions to a Yanukovich presidency

It is imperative that in the event of a Yanukovich victory (or another representative of the current regime) in any subsequent elections, the EU resists the temptation to disengage with Ukraine, as occurred in the case of Belarus when President Alexander Lukashenko usurped power. Arguably it is precisely the lack of EU engagement with Ukraine that may have contributed to the current situation. A more appropriate model is Yugoslavia in 2000, where Europe and the international community provided crucial support and encouragement to the democratic forces in the country, leading to the fall of former Yugoslav President Slobodan Milosevic's regime by peaceful, democratic means.

In the event that Mr Yanukovich is acknowledged as the winner, the EU will need to radically change its policy. Economic aid to Ukraine should be re-targeted away from technical assistance for the approximation of economic legislation to the EU *acquis*, investment support for infrastructure networks, etc. Instead, the EU should offer strong and immediate 'political assistance' to support a pluralistic, democratic Ukraine, with increased and direct support for political parties, civil society, free media, etc. The EU could learn from the US in this respect. Indeed, the EU has been conspicuous by its absence in Ukraine.

Any political dialogue with the executive power should be suspended or minimised until either a) new presidential elections, or in the event that these are not to take place b) parliamentary elections in spring 2006. After either of those, the situation in Ukraine should be reviewed. In

¹ See the extract from the successive General Affairs & External Relations Councils, 22-23 November 2004, item debated (retrieved from http://europa.eu.int/comm/external_relations/ukraine/intro/gac.htm#uk221104).

addition, the EU should cooperate closely with the Ukrainian parliament where the opposition is strong.

Strategy 3: Special strategy for Ukraine under a Yushchenko presidency

A Yushchenko victory would pose a profound challenge for Europe and the EU. Indeed, on one level the EU may find it more difficult to deal with a Ukraine under a President Yushchenko than a Ukraine led by a President Yanukovich. There are two reasons for this: 1) Mr Yushchenko is serious about domestic reform and 2) he is committed to Ukraine's eventual membership of the EU.

In contrast to President Kuchma, who also was ostensibly in favour of eventual accession to the EU, under Mr Yushchenko a push towards EU membership will become credible, as it is likely to be accompanied by economic and political reform. As Prime Minister in 1999-2001, Mr Yushchenko pushed vigorously for economic reforms. Indeed, the threat such reforms posed to powerful oligarchs closely associated with President Kuchma was the reason he was dismissed. While there are vested interests against serious reform in Ukraine, a President Yushchenko would be supported by what appears to be a comfortable majority in the Ukrainian parliament. Crucially, judging by the ongoing mass demonstrations, he enjoys strong popular support, making implementation of difficult reforms more likely.

His immediate task would be to gain the trust and support of the large number of voters in the east and south who voted for Mr Yanukovich. Populist measures to improve the situation of the masses can be expected. These can be afforded owing to current strong economic growth in Ukraine. Indeed, not reversing the increase in pensions and student grants introduced by Prime Minister Yanukovich in his bid for the presidency may be a wise strategy. Re-launching the privatisation process halted by President Kuchma before the elections could further bolster state finances until the impact of expected economic reforms take effect.

Economic and political reforms are likely to be accompanied by vigorous lobbying by the new president and his government for immediate measures from the EU. In particular, the recently negotiated Action Plan to strengthen bilateral relations between the EU and Ukraine as part of the EU's new European Neighbourhood Policy is unlikely to be acceptable to a President Yushchenko. (It was originally planned that the Action Plan would be endorsed in early December. But it is obvious that the EU should not sign the Action Plan until after the political crisis in Ukraine.) The Action Plan consists of long lists of political criteria that Ukraine would have to fulfil as well as specific measures to implement the Partnership and Cooperation Agreement (PCA). Apart from minor new commitments in the short-term and vague promises for closer relations in the medium-term, the Action Plan offers no specific commitments from the EU that would noticeably strengthen relations with Ukraine.

A new Action Plan should thus be negotiated as soon as the situation in Ukraine is clear and a new Ukrainian government is in place, as tangible proof of the EU's commitment to a democratic, pluralistic Ukraine. This should include a number of immediate measures such as the EU endowing Ukraine market-economy status for anti-dumping purposes, as the EU did with Russia in 2002, removing quantitative restrictions on steel imports from Ukraine and starting negotiations on a visa-facilitation agreement. The EU should also be more generous in terms of Ukraine's participation and inclusion in EU programmes and agencies.

The EU should further live up to its promise of increasing economic assistance to Ukraine. The Union could take the lead in organising a donor conference, as was done for Georgia following its 'Rose Revolution' in late 2003, for a combined effort by the international community to support Ukraine. The EU and its member countries, the US, Canada, Japan and the international financial institutions should take part in the conference. These efforts should be bolstered by common EU-US actions supporting Ukraine or at least some form of coordination of activities. The special role of Canada in transatlantic activities towards Ukraine would be welcomed.

A President Yushchenko is, however, unlikely to settle for an upgraded Action Plan. His stated long-term goal is EU membership for Ukraine. Faced with a pro-European reformist like President Yushchenko, bolstered by broad parliamentary and popular support, the EU will find it difficult to continue its current policy of 'welcoming Ukraine's European aspirations' without acknowledging Ukraine as a candidate.

Coming on the eve of the European Council on 16-17 December, the Orange Revolution poses a fundamental challenge for the EU. Widely expected to endorse the beginning of accession negotiations with Turkey, European leaders now have to confront with utmost seriousness the demand from Ukraine of being acknowledged as a candidate for EU membership.

The EU finds itself a victim of its own rules, more specifically Art. 49 of the Maastricht Treaty on European Union, which states that any European country may become a member, and the 'Copenhagen criteria' for membership. Faced with a European country that fulfils these criteria, there is little the EU can do in the end.

The abrogation of one of the principal tenets of EU integration – that the Union is open to all European countries that fulfil the stated criteria of membership – would represent a fundamental break with the basic values on which the EU is based. To do this for the sake of political convenience (to avoid a complicated decision-making process) would be a dramatic break with more than 50 years of European history and a break with Europe's proudest achievements. It would also be a betrayal of the people of Ukraine who have taken to the streets to defend their democratic rights. This is the principal challenge posed to Europe by the Orange Revolution in Ukraine.

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