

Ukraine and the European Union: Time for a Re-Think

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None of the four Ukrainian presidents integrated their domestic policies towards the goal of EU membership instead preferring to wait for a signal of membership from Brussels. There were notable differences between Yushchenko, who was ideologically committed to NATO and EU membership and Yanukovich who is the first Ukrainian president not to seek NATO membership. Despite rhetoric in support of EU membership President Yanukovich is not ideologically committed to move beyond a Deep Comprehensive Free Trade Agreement (DCFTA). The Yanukovich administration seeks to conserve its political and military monopoly of power in a semi-authoritarian regime inside the DCFTA which would be the maximum integration into the EU that it would seek. Party of Regions foreign policy spokesman Leonid Kozhara explained that Yanukovich has not raised the issue of EU membership because there was no need to as the DCFTA would provide Ukraine with four ‘privileges of the EU’ (free movement of capital, goods, services and people). ‘And after receiving these four freedoms we can speak about the fact that our country in effect became a member of the European Union without formal membership,’ Kozhara said¹.

None of Ukraine’s four presidents have undertaken democratic, economic and social reforms in lieu of the absence of a membership offer from the EU. Indeed, only Yushchenko of Ukraine’s four presidents has presided over a democratic administration. Corruption, especially in the notoriously non-transparent energy sector, has never been seriously tackled by any of Ukraine’s four presidents.

There are two reasons for the virtual nature of the West’s dialogue with Ukraine. The first is institutional as the EU has until now only been willing to use ‘carrots’ and ‘sticks’ in ‘enlargement-heavy’ (i.e. full membership) whereas it has only used ‘carrots,’ but never ‘sticks’, in ‘enlargement-light’ (i.e. the DCFTA). European Council Foreign Relations Senior Fellows Nicu Popescu and Andrew Wilson argue that the EU should be more willing to use both carrots and sticks; that is integrating its soft and hard power. The second is a disconnection between the West and Kyiv over definitions of democracy. The Ukrainian authorities have until now wanted to have their cake and eat it, too; rolling back democracy in Kyiv while claiming to sign up to ‘European values’ in Brussels.

EU-Ukraine Relations since the Orange Revolution

In May 2008, following the EU’s enlargement four years earlier, the Eastern Partnership was presented by the foreign minister of [Poland](#) with assistance from [Sweden](#) and inaugurated in [Prague](#) the following May. The Eastern Partnership provides an institutionalized forum for discussing visa agreements, DCFTA and AA with the EU’s eastern neighbors: [Belarus](#), [Armenia](#), [Azerbaijan](#), [Georgia](#), [Moldova](#) and [Ukraine](#) (but not Russia).

The 2007-10 Tymoshenko government laid the groundwork for Ukraine’s membership of the WTO in May 2008 which opened up negotiations for a DCFTA. In November 2009, the EU-

¹ Leonid Kozhara cited by *Ukrayinska Pravda*, 9 February 2011.

Ukraine Cooperation Council adopted the [EU-Ukraine Association Agenda](#) which replaced the [former Action Plan](#), and will prepare for and facilitate the entry into force of the new AA, of which the DCFTA is a component. A list of [priorities for action](#) was jointly agreed by Ukraine and the EU for 2010.

EU-Ukraine Relations under Yanukovych

Ukraine's relations with the EU have gone through three stages since Yanukovych's election. The first and second stages were a credit of trust to the newly elected Yanukovych followed by disillusionment as the EU came to understand that there was a growing incompatibility between the rhetoric of his administration's support for EU integration and domestic policies. The third current stage of EU-Ukraine relations is one of uncertainty as international organizations and Western governments are increasingly critical of democratic regression in Ukraine. Although the Yanukovych administration has chosen a DCFTA over the CIS Customs Union it has yet to choose to support 'European values' at home.

In October 2010, the Ukrainian parliament voted down a resolution to seek EU membership when the pro-presidential coalition refused to support the motion. A May 2011 resolution was though adopted by parliament that supported continued negotiations towards a DCFTA while simultaneously seeking mutual advantages from cooperation with the CIS Customs Union. A month later a presidential decree established a Working Group to develop Ukraine's relations with the Customs Union on the basis of 3 (Russia, Belarus, Kazakhstan) +1 (Ukraine).

Why the Rush to Sign a DCFTA?

Both Ukrainian and EU officials continue to raise hopes that they will sign a DCFTA by the end of this year, perhaps at the EU-Ukraine summit in Kyiv in December. Poland, which has the EU presidency in the second half of 2010, may be interested in claiming this as an 'achievement.' If true it would be a pyrrhic victory.

During the 2010-11 negotiations for a DCFTA the EU, European Parliament, US and international organizations have increasingly raised the issue of democratic regression in Ukraine. There would therefore seem to be an innate contradiction between the EU's rush to sign a DCFTA at the same time as Ukraine is moving away from 'European values.' Anchoring Ukraine inside a DCFTA, while not the same as bringing Ukraine into EU membership would bring immense benefits to the country but these should not come at the expense of turning a blind eye to the very European democratic values that the EU espouses.

In May 2011 the EU unveiled 'A new and ambitious European Neighborhood Policy' in which it stated: 'A functioning democracy, respect for human rights and the rule of law are fundamental pillars of the EU partnership with its neighbors.' The EU's new policy guidelines define 'deep and sustainable democracy' as including 'free and fair elections; freedom of association, expression and assembly and a free press and media; the rule of law administered by an independent judiciary and right to a fair trial; fighting against corruption; security and law

enforcement sector reform (including the police) and the establishment of democratic control over armed and security forces.’²

By the EU’s own admission, Ukraine’s implementation of the EU-Ukraine Association Agenda priorities for 2010³ was poor. The report found that Ukraine had regressed in all five areas the EU understands to be crucial to a ‘deep and sustainable democracy.’ The EU’s conclusions were backed by Ukrainian civil society groups in a report sponsored by the International Renaissance (Soros) Foundation. The report gave Ukraine a scorecard of only 8 out of 70 priority areas that had been implemented from the EU-Ukraine Association Agenda.

With the rapid trajectory of Ukraine’s democratic regression under Yanukovich the EU could be faced with the likelihood that Ukraine will become an authoritarian regime *inside* the DCFTA a factor which would render its Eastern Partnership defunct. As Amanda Paul of the European Policy Centre noted, ‘If the EU fails with Ukraine it would represent a failure of the entire policy.’⁴

The Economist warned there were two buzzwords in Brussels: “no more Cyprus” and “no more Romania and Bulgaria.” This was because, ‘Most Eurocrats agree that the EU’s two newest members, struggling with corruption and organized crime, were let in too soon. Entry requirements have since been toughened, raising complaints of double standards.’⁵ Tougher membership requirements have indeed been in evidence in the EU’s negotiations with Croatia and Turkey but not over negotiations with Ukraine on a DCFTA and an AA.

Political Persecution and the Selective Use of Justice

The EU has repeatedly stated its hope that the Ukrainian authorities will adhere to the rule of law in any court trials and following the brief detention of Yulia Tymoshenko in May 2011, a statement by [High Representative](#) of the Union for Foreign Affairs and Security Policy Catherine Ashton said, ‘The EU will continue to underline to the Ukrainian authorities the need for respect for the rule of law, incorporating fair, impartial and independent legal processes.’⁶ Similar views were made by Michael Emerson, Senior Fellow at the Centre for European Policy Studies, who asked ‘Will it be conducted according to the highest standards of legal practice, including transparency and objectivity of proceedings and independence of the judiciary from politics.’⁷ Such views give undue legitimacy to Ukraine’s notoriously corrupt and politically influenced judicial system where there is no respect for the rule of law and therefore Tymoshenko could never hope to receive a free trial in Ukraine.

The authorities’ use of politics intimidates Ukrainian society and reduces their willingness to become active in politics and civil society. Repression is evident to Ukrainians half of whom

² ‘A new and ambitious European Neighbourhood Policy.’ <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/11/342&format=HTML&aged=0&language=EN&guiLanguage=en>

³ European Commission – External Relations, ‘LIST of the EU-Ukraine Association Agenda priorities for 2010.’ http://eeas.europa.eu/ukraine/docs/2010_association_agenda_priorities_en.pdf

⁴ Amanda Paul, ‘Yanukovich’s predicament,’ *EU Observer*, 19 May 2011.

⁵ ‘Arrest and revival. The capture of Ratko Mladic may revive European enlargement,’ *The Economist*, 2 June 2011.

⁶ Catherine Ashton cited by *Kyiv Post*, 26 May 2011.

⁷ Michael Emerson cited from *Gorshenin Weekly*, No. 23 (December 17, 2010). Available at: <http://institute.gorshenin.ua/media/uploads/062/41/d92e33b9a238.pdf>

believe the authorities are undertaking political repression, according to a June 2011 poll conducted by the Razumkov Centre for Economic and Political Studies.⁸ During negotiations conducted in 2010-11 for a DCFTA, additional politically inspired criminal charges were laid against former Prime Minister Tymoshenko, former Interior Minister Yuriy Lutsenko and eleven other members of the 2007-10 Tymoshenko government, all of whom, except Tymoshenko, are in pre-trial detention. The Danish Helsinki Committee for Human Rights ‘has listed large scale violations of the European Convention on Human Rights.’⁹ Former Economics Minister Bohdan Danylyshyn was granted political asylum in the Czech Republic in October 2010. The charges are plainly absurd against Lutsenko, who has been imprisoned since December 2010 went on a hunger strike in May, for over-paying a pension to his police driver. Other false charges are against nine leaders of fall 2010 anti-tax code protests for damaging floor tiles in Kyiv’s central square.

As the additional charges against Tymoshenko, whose trial began on June 24, 2011, show the Ukrainian authorities have not taken any heed of repeated European and American criticism of selective use of the judiciary. On June 9, 2011 the European Parliament added another strongly worded resolution supported by all political groups except the Socialist political group who have a cooperation agreement with the Party of Regions. The European Parliament, ‘Is concerned about the increase in selective prosecution of figures from the political opposition in Ukraine as well as the disproportionality of measures applied, particularly in the cases of Ms Tymoshenko and Mr Lutsenko,’ and ‘Reminds the Ukrainian authorities that the principle of collective responsibility for the decisions of the government does not permit the prosecution of individual members of the government for decisions that were taken collegially...’ The resolution: ‘Stresses that ongoing investigation of prominent Ukrainian political leaders should not preclude them from actively participating in the political life of the country, meeting voters and travelling to international meetings...’¹⁰

Five Steps to Rescue the EU from Itself

First, the EU should slow down the pace of negotiations on the DCFTA and present clear red lines of impermissible behavior to President Yanukovich. If the Ukrainian authorities are unwilling to heed any EU and other Western criticism of democratic failings now, when Ukraine is outside the DCFTA, there is no likelihood they will do so when they are inside the trade agreement.

Second, the EU should be more willing to use *both* ‘carrots’ and ‘sticks;’ that is, integrate its soft and hard power. The October 2012 parliamentary elections will be a major test of the Yanukovich administration’s commitment to ‘European values.’ No DCFTA should be signed with Ukraine until after the 2012 elections are held and then only if they are declared by the OSCE and Council of Europe to have met democratic standards.

⁸ Poll by Razumkov Center for Economic and Political Studies cited by *Ukrayinska Pravda*, 7 June 2011.

⁹ See the Danish Helsinki Committee for Human Rights November 2010 report ‘Legal Monitoring in Ukraine Preliminary Report on the trials against former Minister of Interior Yuriy Lutsenko and former First Deputy Minister of Justice Yevhen Korniyshuk.’ <http://www.ft.dk/samling/20101/almdel/upn/bilag/160/995276.pdf>

¹⁰ ‘Joint Motion for a Resolution on Ukraine: the cases of Yulia Tymoshenko and other members of the former government,’ European Parliament.

<http://www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=B7-2011-0368&language=EN>

If the 2012 elections do not meet democratic standards, Ukraine would de facto become a second 'Belarus' but inside the DCFTA. Freedom House warned "if left unchecked, the trends set by Ukraine's current leadership will move the country toward greater centralization and consolidation of power – that is, toward authoritarianism."¹¹

Third, the EU should make explicit that future elections will not be considered to have been democratic if the opposition is not permitted to stand. Selective use of justice, as seen by numerous resolutions by international organizations, has been the factor that has most damaged the reputation of the Yanukovich administration and any step in this direction would therefore greatly improve Kyiv's relations with Brussels and Washington.

Fourth, the EU should insist Ukraine continues to abide by its IMF program which has stagnated since late 2010. The government's wobbliness resembles a pattern that has emerged over the last two decades whereby Ukraine only partially fulfills IMF agreements it has been forced to seek in 1994, 1998, 2008, and 2010.

Fifth, by undertaking the above four steps, the EU would succeed in its policy of calling for inclusivity and transparency in Ukraine's reforms process. The magnitude of the reform requirements that Ukraine would take on after signing the DCFTA can only be successfully implemented with the backing of the opposition, which has majority support in one half of the country, and with the cultivation of public opinion because many reforms will be unpopular. The Yanukovich administration's attempts to undertake reforms while antagonizing one half of the country and without engaging with public opinion and civil society is doomed to failure.

¹¹ Ibid.