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Ukraine and the EU after the Orange Revolution

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1. Introduction*

The outcome of the disputed presidential elections in Ukraine is still highly uncertain. It is however clear that the Orange Revolution of November 2004 will have profound consequences for Europe and the European Union'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 people.

It is now 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 Victor Yanukovych as the president of Ukraine. In contrast, Russia has done so.

However, 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 clear 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 emphasized that this is an oversimplification. The issue of separation is limited to the south-eastern regions of Ukraine, namely Donetsk and Luhansk oblasts, where Mr Yanukovych 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 in steel and mining that have played a crucial role in the recent economic upturn in Ukraine. However, 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.

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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 immediate future and after that, the next months and years.

Three strategies are needed:

- **First**, the EU needs to develop strategies 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 Yanukovych victory (or that of any other person representing the current authorities) (medium term strategy),
- **Third**, a strategy needs to be formulated in the event of a Yushchenko 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. Also the Declaration by the Presidency of the European Union on Ukraine from 24 November 2004 was 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, like 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 efforts by EU foreign policy chief Solana, Polish President Kwasniewski and Lithuanian President Adamkus has been a welcome example of EU engagement in the crisis. The EU needs to express its willingness 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, Mr Jan Peter Balkenende, and the president of Russia, Mr Vladimir Putin during the EU-Russia summit in The Hague was a good beginning. The EU should continue to make co-operation in Ukraine and other areas of the "common neighbourhood" a condition for further co-operation on international security issues.

The EU's efforts to promote a democratic, peaceful solution of the political crisis in Ukraine should be co-ordinated with the US and Canada. A meeting of high-level officials from both sides should be considered. These effort needs to be intensified also 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 Lukashenko usurped power. Arguably it is precisely the lack of EU engagement with Ukraine which may have contributed to the current situation in Ukraine. 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 Mr 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 were not to take place b) parliamentary elections in spring 2006. After either of those, the situation in Ukraine should be reviewed. In

addition, the EU should co-operate closely with the Ukrainian parliament where the Ukrainian opposition is strong.

Strategy 3: Special strategy for Ukraine under 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 President Yushchenko than a Ukraine led by a President Yanukovych. There are two reasons for this. First, Viktor Yushchenko is serious about domestic reform. Secondly, he is committed to Ukraine's eventual membership of the EU.

In contrast to Mr 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 Yanukovych. Populist measures to improve the situation of the masses can be expected. These can be afforded due to current strong economic growth in Ukraine. Indeed, not reversing the increase in pensions and student grants introduced by Prime Minister Yanukovych 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 effects 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 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. However, it is self-evident that the EU should not sign the Action Plan before the end of political crisis in Ukraine.) The Action Plan consists of long lists of political criteria that Ukraine would have to fulfill as well as specific measures to implement the Partnership and Co-operation 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 Europe'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 also 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 trans-Atlantic actions 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 with its current policy of 'welcoming Ukraine's European aspirations' without acknowledging Ukraine as a candidate.

Coming on the eve of the European Council on December 16-17, 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 the Treaty article stating that any European country may become a member and the 'Copenhagen criteria' for membership. Faced with a European country that fulfills these criteria, there is precious little the EU in the end can do.

The abrogation of one of the fundamental tenets of European integration - that the Union is open to all European countries that fulfill 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.