

AFTER VILNIUS: THE FUTURE OF EU-UKRAINE RELATIONS

Almost three months ago, Ukrainians took to the streets following the decision of their government to freeze the signing of an Association and Trade Agreement with the EU. While the protests began as a result of this decision they rapidly became focused on democracy, freedoms, human rights, and corruption. The Ukrainian authorities responded to the peaceful protests with violence which led to several deaths and brought the country to the brink of civil war. Today a standoff remains between the protestors and the authorities. How it will end remains to be seen. The EU has a key role to play as Ukrainians are fighting under the EU flag. If the EU fails to react adequately its credibility both as a flag bearer of democratic values and as a foreign policy actor will be eroded.

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In November 2013, the latest twist in Ukraine-EU relations took place. Some two weeks before the EU's Vilnius Eastern Partnership (EaP) Summit, at which Ukraine was expected to sign an Association Agreement (AA) with the EU, which would include a Deep and Comprehensive Free Trade Area (DCFTA), the Ukrainian government announced it was suspending the deal. The government said the decision was made in the interests of Ukraine's national security, in light of the increased political and economic pressure from Russia and the EU's failure to provide adequate financial assistance to make up the losses from Russian trade embargoes.

This Agreement was viewed as a crucial step in strengthening Ukraine's political and economic ties with the EU. It was expected to stimulate Ukraine's real GDP growth and to modernize and transform Ukrainian institutions overall. With European integration having broad support in the country, and deep suspicion that closer ties with Russia would follow, the response to the suspension of the AA was powerful. Mass street protests –beginning at Kiev's famous *Maidan Nezalezhnosti* (Freedom Square), which soon was to be called “EuroMaidan”– kicked-off.

Some two months since the protests began, a standoff between the Ukrainian authorities and the EuroMaidan protesters continues. Kiev is the epicenter of this battle, but the fight has also spread to the other regions. While the protests began as a reaction to the government's decision regarding the AA, it quickly turned into a protest over lack of democracy, freedoms, rule of law, and human rights. Ukrainians are fed up with President Viktor Yanukovich and his “inner circle” pilfering the country's wealth while they live in poverty. Unfortunately, despite the protests being peaceful, Ukraine's leadership chose violence –rather than dialogue– as a response. On 30 November, riot police (*Berkut*) forcefully attempted to disperse protesters using truncheons and baton rounds, leaving hundreds seriously injured. Numerous other violent clashes and confrontations took place thereafter.

Unprecedented Violence

Ukraine has a history of peaceful demonstrations and moderate politics. The violence used against the EuroMaidan activists and ordinary civilians represents a break with tradition and is a direct consequence of the aggressive methods employed by the state. As of early February 2014, eight protestors have been killed, and hundreds more injured. Some 30 people remain unaccounted for, with kidnapping a regular occurrence. Leader of AutoMaidan, a movement within the EuroMaidan protestors, Dmytro Bulatov was found badly beaten and crucified, after he had vanished a week earlier on 23 January.

While the international community condemned the violent acts carried out by Ukrainian security forces, including *titushki* (hired thugs) and riot police, not a single police officer or other security enforcement agent has been arrested despite the government promising a full investigation. The courts have, however, systemically jailed activists. Recently, authorities switched to a more “selective” type of violence –including burning protester’s cars– in carrying out “repression from the shadows” and clamping down further on free media and civil society.

Deadlock in the Country

So far mediation and political dialogue aimed at a mutually acceptable solution have failed to bear fruit. Following international pressure, Yanukovich has become slightly more flexible in talks with the opposition. However, this seems to be little more than a tactical step to play for time rather than a genuine desire to compromise. The abolishment of “dictatorship laws”, which were adopted on 16 January and caused deadly clashes on Hrushevskoho Street,

could hardly be classified as a concession.¹ Neither could the resignation of Prime Minister, Mykola Azarov. Hence his “concessions” have not been concessions at all. When it comes to key demands such as constitutional reform, electoral reform, and a genuine amnesty bill, Yanukovich has been far from ready to concede.

As of mid-February there is a deadlock. The government does not have enough force to clear Maidan, while the opposition does not have enough power to take over the entire country. People are waiting with growing irritation and a feeling of betrayal towards all parties – Ukraine’s leadership, the opposition (for their inability to quickly secure concessions from Yanukovich) and the international community (in particularly the EU) for their lack of decisive action. Russia is actively using its widespread networks and leverage to influence the situation, including widespread

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¹ The dictatorship laws included: criminalizing “extremist activity”, which is defined in broad and vague terms, with large fine for a first offence and up to three years in jail for a repeat offence; creating a penalty for blocking access to residential buildings of up to six years in jail; traffic disruption by a motorcade of more than five cars can be punished by a disqualification of driver’s license and seizure of vehicle; gathering and disseminating information about the Berkut, judges, or their respective families would lead to up to two years in jail; defamation, either by means of press or social media, carries a penalty of up to one year in jail; up to 15 days in jail for unauthorised installation of tents, stages and sound equipment; wearing any sort of mask; scarf, helmet, etc. would lead to 15 days in jail; nongovernmental organizations that accept foreign funds must register as “foreign agents” and face high scrutiny and additional tax measures; mandatory licensing of Internet providers; legal governmental Internet censorship.

propaganda portraying protesters as a horde of extremist hooligans funded by the West to topple Yanukovich and foment chaos in Ukraine. It is impossible to predict which player may break the current deadlock and where it may lead the country.

Why Did It Happen?

The roots of the crisis are embedded in the last 22 years of Ukrainian history, as well as the weak engagement of the EU and the overbearing influence of Russia. While Ukraine achieved its independence in 1991 relatively easy and without bloodshed, the old Soviet elite –after changing the country’s red flag to a blue-yellow one– continued to benefit from its position in the social hierarchy. Independence was not particularly appreciated by a number of political forces and parliamentary groups, in particular the Party of Regions and the Communists. Many of these groups’ representatives openly defended Russian interests more vigorously than Ukrainian ones. Patriotism was never an ultimate value for the entire country.

Ukrainian society has also never been integrated. Lviv and Donetsk have little in common: language, religious confession, historical experience, and political culture vary greatly. This has never been a secret, yet part of Ukraine’s political culture has always been not to touch internal divergences, expecting that in time they would disappear by themselves. After the Vilnius failure, interregional contradictions became a hot point of internal politics. Leading members of the Party of Regions made a number of statements promoting the break-up or division of the country into two or three parts. More important is the fact that even among patriotic political forces, which always presented themselves as defenders of the unity of the country, there are growing (though still not widely publicized) sympathies to the ideas of country division.

Not one Ukrainian government has been an example of good governance. However, the most recent government of Mykola Azarov is unparalleled in its deviance from such principles. Democracy and free media have been eroded, and the rule of law has been crushed. Today the police, courts, judges, and prosecutors are all corrupt. The investment climate is very unfriendly, while the Tax Administration is acting as a vampire institution, drinking blood from law-abiding companies while turning a blind eye to extensive smuggling.

Ultimately, since independence, no government has been able or willing to carry out systemic internal reforms. Rather they all extracted the natural and human resources of the country, further strengthening the corrupt, kickbacks-based nature of the Ukrainian economy. Ukrainian society has been the main victim of this policy.

Twenty five years ago the living standard of Ukrainians was higher than their neighbors both inside and outside the Soviet Union. Today this standard is two times lower than Russia and three (or more) times lower than Poland. The quality of social services, health care, and the educational system is now on par with less developed countries or worse. Corruption has been cherished by state institutions, in particular the judicial system.

Lack of Strategy from the EU

While the EU now describes Ukraine as a “priority partner”, rather than simply a neighbor as was previously the case, and the two partners have a significant level of interdependence, Ukraine’s relationship with the EU has never really been a satisfactory one. Ukraine has always wanted more than the EU has been willing to give, with the EU continually dodging the issue of when and if Ukraine will ever have a membership perspective. From the Ukrainian side, in turn, Kiev has always been more efficient at “talking the talk” rather than “walking the walk” in terms of taking steps to bring it closer to the EU.

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Ukraine is a geostrategic lynch-pin, the backbone of the region. Hence it is no surprise that the EU desires a stable, secure, and prosperous Ukraine. However, at the same time, while the EU wants a “Europeanized” Ukraine “with it,” it seems not to want Ukraine “within it.” As a result, the EU has never fully embraced Ukraine, failing to develop a policy that could seriously stimulate and encourage reform. Rather, with its European Neighborhood Policy (ENP) and the EaP, it has had a policy of “the door is not open but neither is it closed.” One good example of this is the aftermath of the 2004 Orange Revolution when Ukraine became a democratic beacon in the region. While the EU welcomed this change, it maintained exactly the same policy and approach it had sustained with former President Leonid Kuchma. Perhaps if the EU had been more ready to offer robust support to the Orange tandem of Viktor Yushchenko and Yulia Tymoshenko, allowing Kiev to glimpse a real European future, the Orange years may not have turned out so disastrously. Unfortunately this was not the case; Tymoshenko and Yushchenko failed to translate the popular uprising they had spearheaded into satisfying the demands of the people for better governance.

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While Ukraine is undoubtedly a complex country burdened by its Soviet past, it is without question a European country. However, some member states—including the most influential, such as Germany—have chosen to define their policy towards Ukraine through the prism of Moscow, which they have traditionally viewed as a more important partnership that should not be jeopardized. This is reflected in the EU’s lack

of robust response to Russia’s efforts to torpedo its Eastern Partnership Policy in the second half of 2013. The EU does not know how the deal with Russia, with a number of member states viewing relations with Moscow as more important to their national interests than offering 45 million Ukrainians a real European future. Unfortunately, with 28 member states, EU foreign policy is slow and frequently comes down to the lowest common denominator.

Hence by failing to develop a coherent strategy towards Ukraine, the EU has contributed to political and economic chaos that has engulfed Ukraine on many occasions over the last decade (or even longer). This lack of strategy contradicts the goals of security, stability, and prosperity set out in the EU’s neighborhood policies.

The Russian Obstacle

Ukraine is both a national and personal issue for Russian President Vladimir Putin, as he views Ukraine as an indivisible part of Russia. When EaP was launched, Moscow reacted with skepticism. Prior to this, Russia’s main concern had been limited to NATO enlargement, which it successfully neutered at the 2008 Bucharest Summit. Moscow’s anxiety resulted in rethinking Russia’s own approach towards this region and the creation of its own integration project—the Customs Union/Eurasian Union—which it has heavily promoted in tandem with other measures linked to the significant leverage that Russia has over this economic-trade-security-energy sphere. In fact Moscow utilized the association debate to impose its own conditionality on its post-Soviet neighbors.

Unlike the EU, Russia views this region strategically, and while Russia may not have a “strategy” *per se*, it has an objective and is ready to use all available tools to achieve it. The Eurasian Customs Union (ECU) encapsulates Russia’s belief that it has a “privileged” role in this neighborhood. Interestingly, the whole project is

very much modeled on the EU, thereby offering a pragmatic alternative to it. Russia offers to its mostly authoritarian neighbors a partnership that would not require serious domestic changes.

Ukraine, not surprisingly, was the main target for Russia's ECU. Moscow has viewed Ukraine's AA with the EU as something negative and against Russian interests. However, Russia's argument that the DCFTA would damage Ukraine's economic ties with Moscow

was groundless. It would have been possible for Ukraine to negotiate a Free Trade Agreement with the Customs Union, but the Kremlin refused to consider this. Hence the Customs Union proposition became a Russian declaration of confrontation with the EU and its EaP neighbors.

Russia used all available instruments: economic pressures such as nontariff barriers ranging from harmful delays to declaring Roshen Chocolate a health hazard, gas prices, the *Ruskiy Mir*, and the language issue, as well as launching a massive propaganda campaign. Moscow promotes the "civilizational" approach in the shape of an alleged "Eastern Slavic unity", while also using the "conservatism" angle to berate the EU for its approach to gays and lesbians that supposedly goes against Christian values.

Ukraine's strategic location and proximity to Russia's breadbasket and economic heartland of the Volga region make the country key to Russia's geopolitical strength. Russia allied with Ukraine gives Moscow confidence and strength, while a Russia without Ukraine is –in the eyes of the Kremlin– much weaker. Yanukovych's geopolitical U-turn came after a series of secret meetings with Putin during which the latter seems to have made Yanukovych an offer he could not refuse.

The Vilnius Fiasco

The EaP summit in the Lithuanian capital on 29 November 2013 had been billed as a historical event. The Summit was supposed to mark the further "Europeanization" of Eastern Europe. In light of numerous statements from Ukraine's leadership it seemed that, despite Russian pressure, Kiev would remain on the EU track. Rather, the EU presumed it would ultimately be their decision whether or not to sign the

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agreement at Vilnius, taking into consideration that former Prime Minister Yulia Tymoshenko was still in prison and a number of EU-demanded reforms, including those relating to electoral legislation, remained unfulfilled. Hence Ukraine's decision not to sign the agreement came as a massive shock. Not only did it take the shine off the summit, it also marked a massive failure for the EaP.

No party is totally blameless. Ukraine, Russia, and the EU, in very different ways, contributed to the decision of the Ukrainian government. Yanukovich, who is an opportunist leader, was clearly never committed to the EU. He has engaged in playing a game of political poker with the EU and Russia with the aim of staying in power beyond the 2015 presidential election, yet ultimately leaving his country hostage to the Kremlin. The EU not only focused too much attention on the issue of Yulia Tymoshenko – making it the “make or break” issue, it also drafted agreements that had an inadequate balance between incentives and obligations. For example, while the benefits of a DCTFA may be good in the long-term, in the short-term they represent an economic loss. In Ukraine's final initialed text, there is a huge uploading of EU legislation by way of some 300-400 EU legal acts with which Kiev needs to comply. This was a heavy and costly commitment for Kiev to undertake, particularly given that there was no mention of a membership prospect or pre-accession assistance as was given to the Balkan states, and in the face of serious economic losses as a consequence of Russian sanctions. This made the agreement particularly vulnerable to Russian sabotage. Thus, Russia was able to manipulate an undemocratic leadership into its will. If Ukraine had a democratic leadership that was accountable to the people, the decision to ditch the EU agreements would never have been made.

What Lies Ahead?

Each player has a very different vision. Yanukovich would like to remain in power, and to receive financial (and other) support from Russia in order to maintain a “stable situation” until elections, which he wants to win by whatever means he can. The opposition wants to achieve a compromise in the form of rapid constitutional reform, elections, and the creation of a technical government for a transitional period. Maidan wants to re-establish the state with Georgia-type reforms, which would make police and courts subordinate to communities, remove corruption with a top-down approach, put EU integration back at the top of the foreign policy agenda, and remove Yanukovich and his “family”. Russia continues to play a central role. The fact that Kiev owes Moscow a substantial amount of money, as well as having a significant amount of clout inside Ukraine, means that Moscow has considerable leverage on Yanukovich. However, it would be a mistake to believe that Russia is enamored with Yanukovich. In fact, they dislike him as much as the West does.

Their interest is to have somebody in power that will put in place a pro-Russian government to protect and promote Russian interests.

In order to break the deadlock, the EU and U.S. have indicated they are ready to put forth a substantial financial aid package to support economic and political change on the table. It seems this money would be attached to a clear roadmap of deep and systemic reforms. However, if Ukrainian authorities continue to fail in demonstrating genuine political will towards concessions and fully investigating the deaths and kidnapping of protestors, the EU cannot simply “sit on its hands”; it needs to shift up a gear. Targeted sanctions seem to be the most efficient incentive for peace, but a number of member states do not want to go down this road. Other steps such as travel bans and the freezing of assets of selected Ukrainian elites and oligarchs in member states should be implemented.

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Conclusion

Indeed today there can be little doubt that the current regime would like to transform Ukraine into a Russian or Belarusian political model, with no free elections or media. However, and fortunately, Ukraine is not like these two neighbors. There is Western Ukraine, where the Austrian traditions of self-rule, self-organization, and democracy are still alive. Russian-speaking Kiev is more than nationally conscious with a strong, independent and patriotic middle class willing and able to fight for democracy, freedom, and independence. Further, the regions of central Ukraine have an imbedded history of fighting for their freedom that dates back to the Middle Ages. Therefore the road to an authoritarian regime could be a very bloody path indeed. Still, it seems unlikely that Ukraine’s leadership wants civil war, so it will probably aim for a “bad peace.” Thus, Yanukovych is likely to demonstrate a readiness to proceed with a number of reforms, while trying to drag out the process of bringing them into force. This will particularly be the case with constitutional and electoral reform that would neuter his power.

If Yanukovych somehow manages to cling to the presidency until 2015, we can presume that relations will remain in “limbo” because they have hit a dead-end.

There is nothing more the EU can do with Yanukovych. We can also assume that the opposition will win the elections and any attempt by Yanukovych and his cronies to falsify them would bring supporters back to the street. At this point, but also in the event that Yanukovych fails to hold on to power, the EU needs to be ready with a strategy to support Ukraine both politically and economically, and to meet the expectations of the millions of Ukrainians that have been out in the streets, enduring violence and worse, to demand a better future.

The EU remains a symbol of democracy and freedoms, and has a responsibility to act. The EU needs to push for key reforms to speedily move ahead, most particularly constitutional and electoral. Electoral reform is particularly important because while constitutional reform reducing the President's power is important, a fair electoral reform is particularly crucial. Without this, it could still be possible for Yanukovych to become Prime Minister once the constitution is reformed.

The EU needs to develop a long-term strategy for Ukraine. While the recent decision by EU foreign ministers on 10 February, stating the Association Agreement does not constitute the final goal in EU-Ukraine cooperation, is a positive step, it is not enough. Ukrainians are fighting under the EU flag and this crisis was sparked as a result of EU integration. If the EU fails to react adequately to what we are seeing in Ukraine, the future of democracy in the entire region will be in serious jeopardy, as will be the EU's credibility both as a flag bearer of democratic values and as a foreign policy actor.