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DEALING WITH YANUKOVYCH'S UKRAINE

Andrew Wilson

Over the last few years, the European Union's relationship with Ukraine has been undermined by a split on both sides. On the European side, some wanted a reform-minded, western-leaning Ukraine, either as a good thing in itself, or in order to eventually transform or at least contain Russia. Others, meanwhile, were less interested in Ukraine and might even have been secretly relieved to see Ukraine stagnate because it kept the thorny question of enlargement off the table. On the Ukrainian side, some saw their future lying in Europe, while others wanted to move closer to Russia. However, the election of Viktor Yanukovich as president in 2010 creates a new situation. The political crisis of recent years may not be over – even after the replacement of his rival, Yuliya Tymoshenko, as prime minister, Yanukovich doesn't yet fully control the government, let alone Ukraine's powerful 'oligarchs' – but his return to power may represent a real opportunity for Europe.

During the presidential election campaign, much of the western media presented Yanukovich as the pro-Russian candidate and Tymoshenko as the pro-European candidate. In reality, however, both talked of 'resetting' relations with Russia after the 'Euro-romanticism' of the Yushchenko era. Equally, and more significantly, both claimed that the defence of national interests, as they defined them, would still take priority in any resetting of relations with Russia. This growing sense of a Ukrainian national identity could be good for the EU. Whether it leans east or west, the EU should want to see a well-governed Ukraine that is a model to other countries in its neighbourhood. The EU should therefore aim to help Ukraine solve the many problems it faces – political instability, energy dependence on

Russia, a deep economic crisis and a security vacuum - and to keep Ukraine's powerful business lobby from dominating the next five years as they have the last five.

Moreover, Yanukovich could turn out to be better for Europe than many expect. In fact, he might even become something like Ukraine's Richard Nixon – not because he is corrupt (though that is also a danger), but because like Nixon he may be able to reposition Ukraine in geopolitical terms. In the same way that Nixon's anti-communist credentials gave him the political cover to engage China, Yanukovich's links with Moscow and his support among Ukraine's Russian speaking population may make it easier for him to engage with Europe. It is even possible that, through a policy of small but steady steps, Yanukovich could bring Ukraine closer to the EU than his predecessor Viktor Yushchenko's often reckless attempts to claim a 'European destiny'.

Paradoxically, Yanukovich's quest for good relations with Russia could also make it easier for EU member states to reach a consensus about how to deal with Ukraine. Too often in the past, the EU has been unable to develop a coherent policy on Ukraine because some member states fear offending Russia. Meanwhile, other member states have appeared to try to force Ukraine to choose between Russia and the West, for example over NATO membership. The EU now has an opportunity to develop a new approach to Ukraine that explicitly factors Russia into the equation. And if the EU supports Ukraine as it reaches out to Russia in some areas, the EU could help Ukraine push back in others.

The EU thus needs a new twin-track approach of encouraging Kiev to engage with it and with Russia in trilateral formats in areas where the EU and Russia have common interests, while using the good will this generates to push Kiev more strongly in areas where interests diverge. For example, the EU could take advantage of Yanukovich's election to explore a trilateral format on gas and to talk about a new European security order that includes Russia and NATO. This will put it in a better position to make progress on the bilateral track – for example, by getting Ukraine to sign a Deep Free Trade deal with the EU rather than joining a customs union with Russia, Belarus and Kazakhstan, and also by using the Eastern Partnership to help build Ukraine's chronically weak political institutions.

The return of Yanukovich

Despite the hopes invested in the so-called Orange Revolution in 2004, Ukraine's well-known regional, linguistic and other divisions have barely receded in recent years. Yanukovich won the election because he made some inroads in central Ukraine, but 74 percent of his vote still came from the mainly Russian-speaking south and east of the country. Yushchenko never really reached out to the half of Ukraine that didn't vote for him, which undermined his ability to make tough decisions. Yanukovich has promised not to repeat this mistake.

During the election campaign, Tymoshenko sought to portray Yanukovich as the destroyer of Ukraine's European future, which she suggested only she was able to deliver. But since the election, Yanukovich has moved rapidly to make overtures to Europe. In his inauguration speech, he described Ukraine as "a bridge between East and West, simultaneously an integral part of Europe and the former Soviet Union", that will now seek to "get maximum results from the development of equal and mutually beneficial relations with Russia, the European Union and the United States".¹ Yanukovich also reiterated a long-term desire for EU membership and claims to be "committed to the integration of European values in Ukraine".² He further signalled his desire to work with Europe by making his first foreign trip to Brussels.

Admittedly, much of Yanukovich's campaign was based on pro-Russian rhetoric designed to appeal to Russian speakers in southern and eastern Ukraine. But his supporters claim that his Party of Regions will cut taxes, deregulate and make Ukraine an "eastern European economic tiger".³ Yanukovich's notorious use of Russian 'political technologists' helped spark the Orange Revolution in 2004. But he has since replaced them with Washington-based consultants, some of whom worked on John McCain's presidential-election campaign and who have reinvented the Party of the Regions as a business-friendly party along the lines of the US Republicans.

Yanukovich's victory therefore does not necessarily mean that Ukraine will shift back towards Russia, as some in Europe fear. In fact, personal relations between Yanukovich and the Kremlin have not been good in the last two or three years – if anything, Vladimir Putin seemed to prefer Tymoshenko. Since Ukraine became independent in 1991, its foreign policy has regularly swung both east and west – initially but not permanently to the east after Leonid Kuchma's election victory in 1994, and apparently to the west after the Orange Revolution in 2004. But many long-term trends are in the EU's favour. For example, total trade with the EU tripled between 2000 and 2008, and now exceeds trade with Russia by a third. Yanukovich is to some extent beholden to his supporters in Russian-speaking southern and eastern Ukraine. But, on the other hand, many of Yanukovich's business supporters, particularly those in steel and chemicals whose companies compete with their Russian counterparts, are interested in European markets and opposed to closer integration with Russia.

Ukraine's fragile political system

However, the immediate prospects for increased political stability and better policy delivery in Ukraine are not good. Although Yanukovich leads a much stronger party than Yushchenko, only 48.9 percent of voters backed him. Tymoshenko lost a vote of no confidence on March 3, creating yet more instability. According to the constitution, a new coalition had to be made up of party groups, but Yanukovich could not persuade his most likely partner, Yushchenko's former supporters in the 'Our Ukraine' group, to agree to join him by majority vote (36 out of 72 MPs), as the group is now leaderless and highly fractured. Yanukovich forced through a special law allowing him to rely on individual defectors instead. But bribery and threatening the opposition's business supporters are not a stable basis for long-term government, especially with Tymoshenko crying foul in vocal opposition.

Thus, although the presidential election produced a clear winner and a new government has now been formed, it does not have a strong mandate. The government will be dominated by figures such as Prime Minister Mykola Azarov, who was notorious for abusing the tax system to reward friends and punish enemies when Yanukovich held the same office in 2006-07, and Yuriy Boiko and Serhiy Liovochkin, who oversaw questionable practices in the gas industry at the same time. A positive sign, on the other hand, is that Serhiy Tihipko, who has a reputation for economic competence and appeals to Ukraine's small- and medium-sized business sector, has joined the new government as deputy prime minister in charge of the economy.

The option of a 'grand coalition' with Tymoshenko is receding into the distance, although it has been tried before in 2009. The final option of pre-term parliamentary elections in the autumn is unlikely to deliver a stronger mandate for the government. In February, many Ukrainians voted for Yanukovich or Tymoshenko because they saw them as the

¹ See <http://www.president.gov.ua>

² Viktor Yanukovich, 'Ukraine Will Be a Bridge Between East and West', *Wall Street Journal*, 17 February 2010

³ Interview with then Party of Regions Shadow Foreign Minister Leonid Kozhara, *Den'*, 16 February 2010, <http://www.day.kiev.ua/292135/>

'lesser evil'. Tihopko, the rising star of Ukrainian politics, came in third place in the presidential election with 13 percent of the vote, and has been included in the government because Yanukovich fears he would lose votes to him in any early election. Meanwhile, 'Our Ukraine' seems likely to crash after Yushchenko won only 5 percent in the presidential vote. Parliament would therefore likely be gridlocked once again. In short, Ukraine has yet to truly put political instability behind it.

Another reason why political instability is likely to continue is the grim economic situation. The Ukrainian economy shrunk by 15 percent in 2009. A series of ad hoc measures has been used to meet monthly gas payments, culminating in the run-up to the election with reluctant IMF acquiescence in the depletion of foreign exchange reserves. This cannot continue, especially as Ukraine has US\$37 billion in foreign debt maturing in 2010. Even if half of this sum were to be refinanced, Ukraine would still face an estimated funding gap of US\$10 billion.⁴ But the EU holds some powerful cards. Although Yanukovich has talked of Russian or even Chinese assistance, he has little practical alternative in the short run to restoring good relations with the IMF, where the EU has a powerful voice. Once he does so, as well as the existing promise of macro-financial assistance directly from the European Commission, the EU could encourage a broader role for the European Bank for Reconstruction and Development and the European Investment Bank.

Helping Ukraine to help Europe

Whichever way Ukraine under Yanukovich tips, many of its neighbours will follow – both inside and outside the EU. Many states in the Balkans and even the Baltic are increasingly apeing the bad habits of the 'neighbourhood'. Russia's sphere of influence project also reaches deep inside the EU but Ukraine is the linchpin in this strategy. Ukraine still has some friends in the US, and is a (fading) factor discouraging it from what increasingly looks like an offshore balancing act. Thus, for all its faults, Ukraine is still the exemplar of relative democracy in the region. When the EU encourages states such as Belarus and Armenia to reform, it is in effect asking them to be 'more like Ukraine'. If that request makes leaders in Minsk or Yerevan recoil or laugh out loud, then Ukraine really will have failed – and Europe with it.

The question Europeans should therefore ask themselves is not "What can the EU do to help Ukraine?" but "What can the EU do to help Ukraine help Europe?" The EU should consider how to structure incentives to show that it is willing to work with Yanukovich to help Ukraine become more policy-coherent and more capable of policy delivery. Despite suggestions of Russian *schadenfreude* at recent political instability in Kiev, Ukraine's key problem in the last five years

is not that it is in danger of becoming a 'failed state' but that it has become an 'immobile state'. There are many reasons for this, including the degradation of political institutions; the hasty and unhealthy constitutional changes agreed in 2004 that have encouraged incessant conflict between the various branches of state, particularly between the president and the prime minister; the oligarchs, who have manipulated Ukraine's fragile democracy; and Russia, which has used its influence to block policies that threaten its interests.

This stasis is bad for Europe. Above all, the EU wants a reliable and credible partner, but Ukraine's recent progress in implementing reforms has been woeful. Ukraine has also drawn attention to its poor performance through constant over-reach, with ambition always running ahead of performance. For example, Ukraine's request to NATO for a Membership Action Plan in January 2008 – only three months before the crucial Bucharest summit – was too far ahead of concrete achievements in military reform on the ground.

Instead of building up trust, Ukraine has too often destroyed it. Ukraine has been disingenuous about the amount of gas in its reservoirs, which turned out to be almost two-thirds full when Ukraine was asking for emergency EU funding to top them up, and is yet to implement any of the conditions of the gas accords signed after the gas crisis in January 2009. This lack of trust has contributed to what has become known as 'Ukraine fatigue', which is palpable and in recent years has even extended to traditional friends of Ukraine such as Poland. The gas crisis led to a shift in perceptions of Ukraine: many EU member states now see it primarily as an exporter of economic instability and security threats. To make matters worse, Ukraine has even started picking fights with EU member states – for example, with Romania over both passports and environmental standards.

In some ways, however, Yanukovich is in a stronger position to begin to sort out this mess than his predecessor. As mentioned above, his party, which currently has 175 out of 450 seats in parliament, is much stronger than Yushchenko's was. He represents eastern Ukraine, which is home to most of the country's big business; and although he campaigned on identity politics, his record as prime minister in 2002-04 and 2006-07 suggests that he shows little interest in such issues once in office. His election as president therefore offers an opportunity that Europe should take.

A new twin-track approach

With Yanukovich in power, Europe should now take a twin-track approach to Ukraine. In certain intractable problem areas that lend themselves naturally to a trilateral or multilateral format – for example, gas and security – Europe should work with Russia and Ukraine. This will allow Europe to push Kiev to choose the EU over Russia in areas where European and Russian interests diverge – for example, on trade, political reform and the Eastern Partnership.

⁴ Christopher Granville, 'Ukraine is Headed for National Bankruptcy', *Wall Street Journal Europe*, 17 January 2010. State insolvency is not likely in the short term, but the basic figures in this article are not disputed.

Gas

The ageing Ukrainian gas supply system is in more than physical decay: for 20 years it has fed corruption and vast over-consumption of energy, and has gifted Russia undue influence. The gas crisis of January 2009 suddenly made clear that this system was also a huge problem for Europe: when Russia stopped the supply of gas through Ukraine, large parts of Europe froze in midwinter. However, various bilateral attempts to solve the problem have failed. The EU's initial agreements with Ukraine only gave Russia, the ultimate supplier, an even greater incentive to bypass Ukraine in the longer term. Meanwhile, Yanukovich's proposals to ask Russia for a lower supply price in return for a Russian role in a consortium to run the transit system will only prolong the problems of over-consumption and potential corruption, and leave the domestic Ukrainian gas industry without a viable business model.

A trilateral approach would therefore make sense. A deal between the EU, Russia and Ukraine could secure supply to Europe and also secure Russian income. Russian involvement is not incompatible with the agenda of the 2009 EU gas deals: consumer price increases, energy conservation, and reform of the internal gas market, which in the long run will unlock the door to the multi-bank modernisation loan that was mooted in 2009. As a confidence-building preliminary, Ukraine should be included in the agreement on early warning of energy supply disruptions that was agreed with Russia in Stockholm in late 2009. The Ukrainian parliament should be encouraged to ratify the agreement on Ukraine joining the Energy Community Treaty.

Security

A trilateral approach also makes sense on security issues. On the one hand, the idea of a NATO Membership Action Plan (MAP) for Ukraine proved internally divisive and was already effectively dead before Yanukovich was elected. On the other hand, Ukrainian membership in the Russia-dominated Collective Security Treaty Organisation (CSTO) would be just as divisive. But this situation leaves Ukraine in a security vacuum. Yanukovich is therefore interested in new security ideas and is likely to attempt to give new life to President Medvedev's European Security Initiative project. This could also be in Europe's interests if it led to a more substantive discussion with Russia of the lacunae in the post-Cold War security order within the framework of the Corfu process (the security dialogue of OSCE ambassadors). Europe should also consider other ideas such as reviving and expanding the format of the 1994 Budapest memorandum - under which nuclear powers supported Ukraine's territorial integrity in return for the transfer and destruction of Soviet nuclear weapons - to give Ukraine security guarantees.

The EU cannot do much about Yanukovich's willingness to renegotiate the lease for Russia's Black Sea Fleet base in Sevastopol, which is due to expire in 2017. But it is in

Ukraine's interest not to agree to a Guantanamo-style lease of 30 or 40 years. The idea of a NATO MAP may be off the agenda, but Yanukovich should be receptive to maintaining year-on-year cooperation with NATO - much as he did when he was prime minister. To show that the EU values Ukraine's broader role, Ukraine could be encouraged to expand its provision of cargo planes for EU peacekeeping operations.

Deep Free Trade/Customs union

Undertaking such initiatives on gas and security on a trilateral basis with Russia may put the EU in a better position when it comes to issues on which there is a genuine conflict between European and Russian interests. In particular, Ukraine currently faces a choice between a Deep Free Trade agreement with the EU and a customs union with Belarus, Kazakhstan and Russia. The EU should make it clear that Ukrainian membership in such a union is absolutely incompatible with the proposed Deep Free Trade agreement. The EU should also be tough on Ukraine's policy towards South Ossetia and Abkhazia. Yanukovich seems to be looking for ways to wriggle out of the promise to recognise the two states that he made in the heat of the conflict in Georgia in 2008. His party is in fact divided on the issue and a tough EU stance would actually make it easier for him to step back from the promise.

Political reform

Europe should also push harder on political reform. This is another area in which European and Russian interests diverge: whereas the EU has a genuine interest in building up Ukraine's sovereignty to make it a more effective partner, Russia has often sought to exploit Ukraine's weakness to prey on its assets and assert more political control. Europe should begin by upgrading its secondment of high-level experts under the Eastern Partnership's Comprehensive Institution-Building Programme.

But if the new government under Mykola Azarov proves short-lived and political instability continues, the EU should also be prepared to step in and broker a political settlement. Unlike the elite compromise that ended the Orange Revolution in 2004 (and arguably sabotaged its prospects from the outset), the EU should promote a deeper, more meaningful solution by chairing a constitutional round table to agree on new and more effective rules of government. The political parties may agree to EU involvement: the 'nuclear option' open to the governing coalition - that of simply persuading the Constitutional Court to annul the changes agreed in December 2004 and revert to the status quo ante - will simply reintroduce old problems and be unacceptable to the opposition.

The EU should also push for a serious, game-changing initiative on corruption, such as establishing a central law enforcement unit like the FBI. The EU should provide support for the reform of the state procurement and public finance

management systems. It should also support judicial reform. A good start would be to establish the hierarchy of courts and their prerogatives, streamline the appeals procedure, and reform or abolish the Soviet-era Procuracy system, which has become a source of corruption. Europe should also push Ukraine to allow foreign judges to sit in court and in chambers.

The Eastern Partnership

In order to further encourage political reform, the EU should encourage a healthy element of competition between the leading members of the Eastern Partnership – currently Moldova and Ukraine. The EU should encourage both states to focus on domestic policy and put their energies into greater cooperation with the EU rather than foreign policy disputes. Kiev worries too much about the exaggerated threat of pan-Romanianism in Moldova, but has legitimate fears about the stalled Transnistria process. The EU should help revive the ‘5+2’ format. It should welcome a Russian role, if it is constructive, but also seek to involve Romania, which must agree to any deal if it is to stick.

Crimea

As well as pushing hard in areas such as political reform, however, Europe should also try to provide support to Ukraine in areas where it needs it – for example, in the unstable Crimean peninsula. Crimea is not, as some believe, the next South Ossetia: military conflict between Ukraine and Russia over the peninsula is highly unlikely. On the other hand, Crimea will not automatically restabilise just because the Russian-speaking Yanukovich is now president. Rather, Crimea functions as a ratchet that Russia can raise to increase the pressure on whoever is in power in Kiev. If Yanukovich’s promised defence of Ukrainian national interests becomes too robust, he could soon find himself subject to as much pressure as other Russian ‘friends’, such as Alyaksandr Lukashenka in Belarus.

The EU should therefore not abandon or scale back its planned Joint Cooperation Initiative in Crimea. Part of its mission there should be an EU Information Centre, which should not confine itself to handing out leaflets, but work actively to sell the EU among local media, political parties and NGOs. The EU should also be more ambitious in socio-economic development (e.g. sewage for Balaklava, roads out of Sevastopol to help it diversify its militarised economy, help with building schools for the Crimean Tatars) and create a cultural programme to massage the sensibilities of local Russian speakers (for example, by making Yalta a city of European Culture). A small increase in the EU’s commitment could help open Europe up to the Crimeans as well as promote the EU in Crimea.

Visa liberalisation

No single issue related to EU-Ukraine relations matters more to the Ukrainian public than the availability of visas for EU countries. It is particularly urgent because in 2012 the European Championship football finals will be held in Poland and Ukraine – in other words, astride the EU border. But Ukraine should use the 2012 finals as a stimulus for necessary reforms, rather than see a temporary suspension of visa requirements as yet another excuse to avoid such reforms. The EU should support the secondment of experts from the Western Balkans to explain how they won visa liberalisation by putting delivery before demand (e.g. passport reform, beefing up border controls with more manpower, and CCTV). Ukraine should also copy Moldova, which is fast-forwarding the introduction of biometric passports in 2011. Even if Ukraine is promised a ‘road-map’ towards a visa-free future, *both* sides need public benchmarks to make progress on practical reforms. For example, in order to show some flexibility, the EU could propose that Ukrainians who receive new biometric passports could obtain their visas free of charge. The EU could also offer assistance with the delimitation and demarcation of the Ukrainian-Russian border.

Promoting Europe

As well as providing this kind of support, Europe could do other things to make itself more popular in Ukraine. For example, people-to-people exchanges have a huge impact in the long run. However, there is currently no EU investment in Ukrainian education at all equivalent to the Diplomatic Academy in Yerevan, which opened in February 2010, or the European Humanities University for Belarus, which is currently in exile in Vilnius. The EU should therefore consider a vast expansion of the Erasmus scheme: it is plainly absurd that the EU currently only awards 26 scholarships to Ukraine, a country of 46 million people. It could even classify Ukrainian students as ‘home students’ to give them equal access to universities in EU member states.

Finally, Kiev could also be a showcase for the new European External Action Service (EEAS). If the appointment of high-level EU advisers is expanded to Ukraine after successes in Armenia and Moldova, an expanded EEAS will be their key liaison. An expanded EU mission should be staffed by skilled diplomats and political heavyweights. If Europe is to pursue the twin-track approach outlined above, a strong and capable EEAS in Ukraine along these lines will be essential.

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