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Ukraine and the EU after the elections: more of the same?

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Background

Relations between Ukraine and the EU have made unspectacular progress since the 2004 Orange Revolution, despite the expectations raised by the democratic uprising in Kiev and the Union's enlargement to Central and Eastern Europe.

Since 2004, Ukraine has been confronted with recurrent internal political turmoil and parliamentary gridlock which have tarnished its image as a reforming country and the prospects of deepening relations with the enlarged Union. Meanwhile, the EU has been distracted by the trauma of the failure to ratify the Constitutional Treaty and the ensuing 'enlargement fatigue' reinforced by the experience of Bulgarian and Romanian accession.

The newly-elected government of Our Ukraine (OU) and the Yulia Tymoshenko Bloc (BYuT) offers a second chance for the Orange forces to deliver on the promises they made in 2004 and failed to meet. If it is able to bring about greater political stability in Ukraine, this would allow it to introduce the much-needed reforms that would, in turn, allow it to put greater pressure on the EU to start thinking about Ukraine as a potential candidate for accession, albeit in the long term.

For the EU, the signing of the Lisbon Treaty and optimism about its successful ratification should enable it to devote more energy and effort to policies towards its wider neighbourhood – and towards Ukraine, as a key neighbour, in particular.

So what are the key stumbling blocks to fostering a closer relationship between the two sides and what can be done to speed up progress?

The three-year crisis

The 2004 Orange Revolution failed to deliver domestically. The three years since then have been marked by political infighting, personal rivalries among its political elite and government incompetence. As a result, Ukraine has stumbled from crisis to crisis.

In 2004, the Orange Coalition was a heterogeneous collection of disparate groups united primarily by opposition to former President Leonard Kuchma's increasingly repressive regime. It lacked a common, clearly-defined political agenda – a problem subsequently exacerbated by President Viktor Yushchenko's weak and unstable leadership, and Yulia Tymoshenko's 'populist' approach and apparent inability to act as team player.

Controversial constitutional reforms in early 2005, which significantly enhanced the powers of the government at the President's expense, also resulted in widespread gridlock in the decision-making process. This was compounded by arguments over speedy re-privatisation deals, corruption allegations and a lack of transparency in the policy-making process, sparking deep divisions within the "revolutionary" forces.

After only eight months in office, Tymoshenko was dismissed as prime

minister by Yushchenko and the government collapsed shortly afterwards, prompting fresh elections which returned the President's rival Viktor Yanukovych to power. Their relationship proved disastrous, with clashes over policy priorities and attempts by the government to erode the President's remaining powers.

President Yushchenko took dramatic action by dissolving parliament again in April 2007, sparking a general election on 30 September. Although Yanukovych's Party of the Regions won the largest share of the vote (34.3%), the unexpected gains made by the BYuT (with 30.7%) opened the way for it to form a coalition government with the OU (with 14.1%).

The election results also demonstrated a significant change in voting patterns. Most parties lost support in their traditional strongholds and gained votes in other parts of the country, making them more national in character and weakening Ukraine's previously strong regional cleavages.

Tymoshenko was unquestionably the biggest winner. Many voters, tired of weak leadership, switched to the BYuT because of Tymoshenko's slick style, promising populist goals, a neutral position on NATO membership, anti-corruption and poverty-reduction measures, and thus making inroads into Yanukovych's traditional constituency in Russophone eastern Ukraine.

However, after the vote, differences between the camps once again resulted in weeks of delay because of strong opposition from some within the OU to Tymoshenko becoming prime minister.

She was narrowly elected as prime minister more than three weeks later, presiding over a government which has 228 seats – just two more than the majority required to pass most legislation.

The new cabinet is predominantly pro-Western, with a mix of old and new blood and an awareness of the need for good relations with Moscow. Volodymyr Ohryzko, a close ally of Yushchenko and strong supporter of NATO membership, becomes foreign minister, with an ex-Prime Minister Yuriy Yekhanurov (a critic of Tymoshenko) taking over the defence portfolio. Reform-oriented Viktor Pinzenyk, Finance Minister in the 2005 Orange government, returns to this post, with BYuT also taking the economy and energy dossiers.

State of play

Despite their profound domestic political differences, Ukraine's political elites have gradually converged towards a consensus on the need to improve relations with the EU – a striking and important development since the days of the Orange Revolution.

In February 2007, the Ukrainian parliament adopted a Resolution, supported by all the major political parties, on the country's commitment to European integration. However, there is no such consensus on the issue of NATO membership, with President Yushchenko continuing to insist that moving closer to the alliance through a Membership Action Plan should be a priority even though public opinion still seems strongly opposed to this.

Meanwhile, Ukraine and the EU have only deepened their relationship marginally over the past three years. Although the Union welcomed the Orange Revolution and Ukraine's 'European choice', support among the Union's 27 Member States for giving the country a clear membership perspective was limited to neighbouring Eastern European countries (particularly Poland, Lithuania and Hungary) and the European Parliament, which backed this approach, at least in principle, by an overwhelming majority.

However, the European Commission and Council remained non-committal on this issue; instead, they urged Ukraine to keep its accession ambitions on ice and focus first on political and economic reforms within the framework of the new European Neighbourhood Policy (ENP), designed to bring the country closer to EU standards and values. This reserved approach also reflects a lack of agreement within the EU over what to do about Ukraine.

Although the revolutionary forces were disappointed by the Union's initial response to the events of 2004, they half-heartedly opted to work through the ENP (which the Union regards as 'enlargement neutral') as a first step towards an ever-closer relationship.

In February 2005, Ukraine signed a three-year Action Plan with the EU which set out the main areas where the country needed to introduce reforms to meet Union standards. Full implementation of this plan is almost the equivalent, in the ENP context, of meeting the 'Copenhagen criteria' for EU membership. However, Ukraine's progress to date has been somewhat patchy and the plan is unlikely to be fully implemented on schedule.

The most recent Commission report stated that Ukraine had made headway in consolidating respect for human rights, the rule of law, minority rights and freedom of expression, and congratulated Kiev on holding free and fair elections. The EU has also recognised Ukraine as a market economy, and pledged

to support its accession to the World Trade Organization. Furthermore, cooperation on Common Foreign and Security Policy (CFSP) issues has deepened, with Ukraine aligning itself with EU positions on questions of regional and international relevance, and cooperating on issues of common interest such as the situation in Belarus and the settlement of the Transnistria issue.

However, endemic corruption remains a serious concern and efforts to combat it have proved ineffective, with the culture of corruption exacerbated by a rise in international organised crime. This remains the main challenge to Ukraine's economic growth and overall development, with a recent report by the Council of Europe's Group of Countries Against Corruption (GRECO) warning that Ukraine suffers from systemic corruption which constitutes a direct threat to the principles of democracy and the rule of law.

The judiciary's independence is also in question: the country has an imperfect, deregulated system with overly complicated procedures and increasing interference in the courts' activities by administrative and political institutions.

Progress in implementing reforms has also been hindered significantly by conflicts between authorities, a lack of funding and human resources, the absence of a body to coordinate the drive for European integration, the private and business interests of political leaders, and long pre- and post-election periods of political instability when parliament has not functioned, making it impossible to pass legislation.

Just a neighbour?

One key sticking point in the EU-Ukraine relationship has been the country's EU membership ambitions, and the question of whether participation and engagement in the ENP are reconcilable with (and conducive to) possible future EU accession.

There is a consensus among political elites in Ukraine that a policy framework which includes countries such as Morocco and Israel and offers no membership perspective is not an adequate framework for relations, despite the ENP's enhancement since December 2006.

Kiev insists that such an 'ENP-Plus' does not bring any new added-value and cannot deliver anything tangible to Ukrainians. Given the falling support for the EU in the country, Kiev believes it needs something more solid to 'sell' back home to justify continuing with often painful domestic reforms.

This has prompted increasingly strong signals of Ukraine's growing dissatisfaction with its current situation. Viewed from Kiev, whether or not the existing Action Plan is prolonged beyond February 2008 now appears to depend on whether the EU can offer it more tangible incentives – and ones which are not available to non-European ENP countries, to signal an important difference in the way it is treated.

An important test of this will be the new 'Enhanced Agreement' being negotiated to replace the old Partnership and Cooperation Agreement (PCA). Ukraine is pressing for something similar to a Stabilisation and Association Agreement – like those offered to the Western Balkan countries, which give them a more or less explicit membership perspective.

The EU is currently unwilling to go that far, although many of the areas of collaboration envisaged in the Enhanced Agreement are crucial for the Union, starting with energy security and market access. Ukraine's leaders must also prove that they can provide some political stability and continuity in the reform process.

Stuck on the border

Making it easier for Ukrainian citizens to travel to the EU is crucial to bring the country – whose name literally means 'land on the border' – closer to the Union and to promote people-to-people contacts. To this end, a visa facilitation and readmission agreement was signed in June 2007 which allows certain categories of people (businessmen, students, scholars, scientists) to obtain visas more rapidly and helps put an end to overly-complex procedures and groundless visa denials. It is due to come into force by the end of 2007.

However, the enlargement of the Schengen border-free area in January 2008 will make it more difficult for ordinary Ukrainians to travel to their Western neighbourhood. Until recently, visas from Ukraine's immediate neighbours – Poland, Slovakia, Hungary, the Czech Republic and the Baltic States – were free of charge and easily accessible. But now Ukrainians will have to pay €60 for a visa and the issuing of multiple-entry permits will be greatly reduced.

Since last September, when the testing of Schengen control systems began, Ukrainians have encountered growing problems at the border, from checks on vehicles (including fuel levels and speedometer data) to restrictions on the number of crossings per day and, more generally, slow and irregular border and customs services. As a result, Kiev feels the EU has replaced the iron curtain with a paper curtain. It is possible, however, that border guards are simply being extra vigilant until they receive the final green light for Schengen membership on 21 December.

Also crucial is the development of a 'deep' Free Trade Area (FTA) to further strengthen bilateral economic integration. Ukrainian membership of the WTO is a pre-condition for starting negotiations on this. Ukraine has been bidding for a seat at the WTO table for 14 years and, with the signing of a bilateral deal with Kyrgyzstan to settle an old dispute, the last hurdle now appears to have been overcome. WTO membership would not only pave the way for the FTA with the

EU, but also promote efficiency and foreign investment.

Finally, Ukraine is a key energy partner for the Union. The two sides signed a Memorandum of Understanding in December 2005 and significant progress was reported on implementation at the September EU-Ukraine Summit.

The new Enhanced Agreement would promote energy security, improve safety and environmental standards, and foster progress towards integrating electricity and gas markets. Ukraine needs EU assistance to diversify its energy supplies, mitigate its current heavy dependence on Russian energy and develop alternative energy sources.

Prospects

The Enhanced Agreement negotiations offer Ukraine and the EU an opportunity to re-calibrate their relationship. In particular, a new accord could establish a revised set of concrete objectives and its subsequent implementation in 2011 could provide an opportunity to deliver tangible benefits for both sides.

Furthermore, however much Ukraine complains about the ENP Action Plan, this has clearly stimulated the reform process and helped concentrate minds on what needs to be done. Its effective implementation would strengthen Ukraine's position in the Enhanced Agreement negotiations, so it has nothing to lose by allowing the plan's implementation to be extended until the end of 2008.

At the same time, new incentives are needed to keep Ukraine motivated, such as a road map for a visa-free regime similar to that with the Former Yugoslav Republic of Macedonia (which is officially a "candidate" for EU membership).

The EU also needs to pay much greater attention to public diplomacy: it has to clarify its message and ensure this reaches ordinary Ukrainians. This means squaring a difficult circle: sending positive signals to Ukraine that the door is open for closer integration as long as Kiev shows it can comply with the 'rules of the game' and stick to its reform programme, while simultaneously communicating to the public that the process is both lengthy and arduous, albeit with significant rewards.

The relationship with Kiev is a key barometer of the ENP at large. The ENP still needs to demonstrate that it has sufficient flexibility to successfully accommodate countries like Ukraine alongside states that do not share a membership vocation.

Ukraine is too important a neighbour for the EU to engage with through anything other than a clearly-defined and properly-implemented set of policies – and success in Ukraine is crucial to bringing prosperity and stability to the whole region.

Above all, however, Ukraine must get its own house in order if it is to gain the maximum possible from its relations with the EU.

The main challenge in this respect is for the new Orange government to put differences aside and work constructively towards shared goals without allowing personal ambitions and sectoral interest groups to derail the process.

However, the tortuous talks on forming the new government and its slim majority in parliament do not bode well for the prospects of political reform, and the forthcoming 2009 Presidential elections could also hamper progress.

The new parliament's first task should be to introduce the constitutional changes needed to ensure more effective and accountable government.

To bring an end to the three-year crisis and consolidate democracy, the parliamentary majority for such changes must be broader than the government coalition alone.

Key institutional and political players must cooperate beyond their narrow contingent interests and contribute to forging a sustainable political system and law-making machinery. Abuses of parliamentary immunity also need to end, and the independence of the judiciary and constitutional court must be strengthened.

In other words, Ukrainian leaders must prove that they are willing and able to carry out the required reforms and generate the necessary momentum, regardless of what the EU can or cannot promise at this stage in terms of future membership.

If this does not happen, the country could well find itself back at the polls within a few months, with political turmoil persisting until the 2009 Presidential elections.

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