

ANALYSES

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DOMESTIC CHALLENGES IN UKRAINE: IMPLICATIONS FOR THE EU

DOMESTIC DEVELOPMENTS IN UKRAINE WILL BE DECISIVE FOR THE FUTURE OF EU-UKRAINE RELATIONS.

THE PRIMARY GOAL OF THE UKRAINIAN RULING ELITE IS TO STAY IN POWER AND CONTINUE THEIR STRATEGY OF PERSONAL ENRICHMENT, SO THEY WILL BE WILLING TO USE VIRTUALLY ANY MEANS NECESSARY TO WIN THE PRESIDENTIAL ELECTIONS IN 2015.

THE ATTITUDE OF THE RULING ELITE IS EXTREMELY DANGEROUS FOR THE FURTHER DEVELOPMENT OF DEMOCRACY IN UKRAINE, BECAUSE IT RENDERS A TRANSFER OF POWER TO THE OPPOSITION UNFEASIBLE.

THE ECONOMIC SITUATION IS DETERIORATING RAPIDLY AND UKRAINIAN SOCIETY IS GROWING INCREASINGLY DISCONTENTED, WHICH MAY RESULT IN PROTEST CRYSTALLISING AROUND THE OUTCOME OF THE PRESIDENTIAL ELECTIONS.

IN LIGHT OF THE ABOVE, THE EU SHOULD CONTRIBUTE TO THE DIFFICULT TASK OF SHAPING AN ENVIRONMENT IN WHICH FREE AND FAIR ELECTIONS ARE POSSIBLE, AND ENGAGE MUCH MORE BROADLY WITH UKRAINIAN SOCIETY.

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Regardless of whether the Association Agreement and DCFTA with Ukraine will be signed at the Eastern Partnership Summit in Vilnius, EU-Ukraine relations in the coming years will be significantly shaped by internal developments in Ukraine. However, recent actions by Russia targeting Ukraine, Moldova, Georgia and Armenia have shifted the emphasis away from the domestic Ukrainian situation to the geopolitical plane. These actions not only provoked a critical resolution by the European Parliament, but also refocused attention in the EU on the regional dimension of signing the Association Agreement.

While the geopolitical consequences of the Agreement should be analyzed and assumptions regarding them made explicit, with this policy brief we aim to return the focus on developments within Ukraine to the foreground. In order to understand the challenges Ukraine itself and EU-Ukraine relations will soon be facing, a deeper comprehension of ongoing political and societal processes in the country is necessary, as is an understanding of the logic underlying the actions of the current elite. This policy brief aims to make a contribution to this goal, as well to encourage further German-Polish cooperation in shaping the EU's policy towards Ukraine after the Vilnius summit.

Political problems confronting Ukraine: Two theses

Firstly: Under President Victor Yanukovich the approach to dealing with the political opposition has become decisively more ruthless than the one pursued by his predecessors. Effective opposition is seen as something to be crushed or co-opted and thereby eliminated from political life. The imprisonment of Yulia Tymoshenko and other former leading political figures is only the most flagrant example of this approach. **The attitude of the ruling elite is extremely dangerous for the further development of democracy in Ukraine, because it renders a transfer of power to the opposition unfeasible.** This is not only because the opposition is weakened by the constant harassment of the ruling regime (as well as its own internal disagreements), but also and especially because those in power have created a situation in which they must fear serious retribution by their successors.

Thus the rulers are becoming increasingly willing to ensure they remain in power through virtually any means necessary. Some form of violent confrontation cannot be ruled out in the future. The current situation is significantly worse than the second term of Leonid Kuchma - just prior to the Orange Revolution - when autocratic tendencies were also visible.

Secondly: The presidential elections currently scheduled for March 2015 will be of major importance for the future of Ukrainian democracy. In 2014 and the beginning of 2015, one can expect a very dirty electoral campaign by the current regime and much more serious irregularities during these elections in comparison with the parliamentary elections of 2012. Even these were assessed as not fully democratic by many observers; the OSCE final election report listed a number of serious shortcomings, which have not yet been effectively addressed in Ukrainian legislation and practice. A second term for Yanukovich would mean the rapid strengthening of autocratic tendencies in Ukraine. A liberalization of his regime after 2015 seems to be virtually impossible. Obviously the realisation of such a scenario would have a damaging impact on EU relations with Kyiv.

Priorities and challenges of the ruling elite

Yanukovich and the Ukrainian ruling elite are interested in maintaining the status quo. This means above all three things.

First of all, the primary goal of the current elite is to prolong their stay in power indefinitely. Their efforts are focused mainly, one can even say exclusively, on this. They are aware that they cannot afford to lose power because the case of Yulia Tymoshenko in particular has altered the political environment in Ukraine. The elite are convinced that they would be severely punished if a new ruling group came to power, and their fear for their personal security is growing, which may push them towards extreme actions, especially in the context of the 2015 presidential elections.

Secondly, they prefer to preserve the current economic system of Ukraine, which is characterised by strong connections between politics and business and has resulted in a merging of those two spheres. In addition, the ruling elite would like to dominate the economy completely. Actions undertaken by the so-called “family” - a circle around Yanukovich and his son Oleksandr - aimed at taking over the most profitable sectors of the economy provide clear evidence of this. This situation creates problems not only for average Ukrainian businesses, but even for some Ukrainian oligarchs close to President Yanukovich, as well as for foreign investors.

Thirdly, the elite would like to maintain the position of Ukraine as a country somewhere between the EU (and the West as a whole) on the one hand and Russia on the other. This position is extremely important for their business activities. They wish to be politically independent from Russia but to continue doing business with Russian enterprises according to more or less established “Russian-Ukrainian” informal rules, while at the same time achieving political association with the EU. However, they are not willing to commit fully to implementing EU standards and rules, neither in business nor in politics. Therefore they are not interested in genuine integration with the EU, which would require a completely different approach both domestically and in the elite’s interactions with Russia. The Association Agreement, including the Deep and Comprehensive Free Trade Agreement (DCFTA), is thus perceived by Yanukovich and his regime primarily as an

important card to be played in the game with Russia rather than as an opportunity for a deeper relationship with the EU.

Society – a key obstacle for the Yanukovych regime

Victor Yanukovych was elected president in a largely free and fair process in February 2010. Now, however, he has lost a large part of his backing within the populace, even among his traditional supporters in the Donbas region. Ukrainian citizens are becoming increasingly frustrated with the deteriorating economic situation combined with the clear and continuing enrichment of a small elite circle. Along with this frustration there continues to be a significant amount of political pluralism in society, due e.g. to differing attitudes in eastern and western Ukraine, especially in the realm of foreign policy. Furthermore, various political preferences as well as ethnic and linguistic differences combine to ensure pluralistic tendencies within society, making it difficult for Yanukovych (or any other leader) to create a broad base of support. This pluralism should be viewed not as a temporary situation but as a well-established and stable phenomenon.

There is also a tradition of protest, not only in the context of the Orange Revolution but prior to it as well (e.g. the “Ukraine without Kuchma” movement in the early 2000s). Thus a certain potential for opposing the regime exists, and the ruling elite are aware of this. Nonetheless, so far protest measures have been limited to small groups and minor causes, e.g. small entrepreneurs, participants in the Chernobyl cleanup, war veterans, etc. Their actions take place against a background of widespread political apathy in society at large and a tendency to focus on day-to-day existence rather than larger endeavours. A further growth of apathy in society would work in favour of Yanukovych and the current regime because an inactive society is much easier to pacify.

So far the regime has largely ignored the demands of the various social groups. Even when there has been some attempt to take them into consideration, it has been either simulated or has affected areas where the ruling elite have few significant interests. However, elections tend to crystallise protest sentiment, especially if large numbers of people believe that their votes were tampered with and/or ended up counting for nothing. Thus the presidential election in 2015 will be a test for both the current regime and for Ukrainian society.

Political opposition – failing to achieve its potential

In theory, the political opposition can build on the pluralist tendencies in society described above. In practice, however, the opposition tends to be preoccupied with its own narrow development rather than reaching out effectively to parts of Ukrainian society.

The opposition is finding it profoundly difficult to achieve a meaningful degree of unity vis-à-vis the Yanukovych regime. To some extent this is natural, since the various opposition parties are fighting largely for the same electorate – those who are more pro-European, have a more critical view of the Soviet past, are less inclined to intensify cooperation with Russia, and are more focused on Ukrainian national attributes. However, instead of capitalising on potential similarities in their programmes, the opposition forces often lose themselves in internal leadership squabbles. While

some unified actions have been undertaken (common candidates in some districts in the parliamentary elections of October 2012, demonstrations in major Ukrainian cities and a merger of some opposition parties in 2013), these have not been sufficient to convince large segments of the Ukrainian populace of the opposition's ability to unite behind a joint programme. They have not made the most of their relative success in the October 2012 elections, which resulted in a weakened position for the ruling Party of Regions despite significant manipulation of the election results at the vote-counting stage.

The election results demonstrated a clear need within Ukrainian society for new forces in the parliament. One indication of this can be found in the support for Vitali Klitschko, whose party UDAR (Punch) received almost 14% of the vote. Klitschko convinced voters by his personal campaigning style, his perceived reform-oriented and pro-European agenda and his previous success as a world-class boxer. However, his party does not have a strong profile and there are nagging questions about the strength and loyalty of his team. Another indicator is the relative success of the nationalist party Svoboda, which received over 10% of the vote in the October 2012 parliamentary elections and entered the national parliament for the first time. Svoboda has gained voters because some people are looking for radical change and the party has chosen to focus increasingly on issues such as corruption and socioeconomic problems, moving away from its traditional emphasis on xenophobia and a pro-Ukrainian ethnic agenda. However, these stances have by no means been abandoned, which means that increasing political influence for Svoboda could further polarize society.

The economic crisis as a political factor

The current ruling elite have pursued a course determined almost exclusively by their own personal interests. In combination with unfavourable external factors, this approach has led to a stagnation of the economy and to increasing disadvantages both for Ukrainian businesspeople outside the ruling circle and for foreign investors. Industrial output has been falling, and the government has relied increasingly on foreign currency reserves, bringing them down to disturbing levels. Standard and Poor's and Moody's have given a negative prognosis for Ukraine's already low credit rating, and IMF loans have been suspended since March 2011 due to the Ukrainian government's unwillingness to commit to certain key reforms in the gas and other sectors. Poor performance is simultaneously an indicator of Ukraine's problematic economic and fiscal policy and a potential catalyst for social upheaval, should the downward trend continue. The above analysis of the motivations of the Ukrainian elite, as well as deteriorating relations with Russia and the ongoing crisis in the Euro zone all point towards further economic difficulties for Ukraine. Since the main economic benefits of the DCFTA will only take effect in the medium to long term (assuming Ukraine undertakes the necessary reforms), its signing can temporarily generate a more positive overall climate for cooperation, but will not automatically bring Ukraine short-term economic relief. In sum, a serious economic crisis is very likely in 2014, posing a major challenge to the ruling elite.

The presidential elections in 2015: Probable regime tactics

How will the ruling team deal with the challenge of the 2015 presidential elections, considering the obstacles described above? The economic crisis is likely to play a decisive role in the campaign, since the already low public support for Yanukovych is almost certain to decrease further due to the deteriorating economic situation. This is likely to provoke a series of populist measures in the run-up to the elections to keep society pacified and to gain votes. With regard to the opposition, Klitchko may well prove the most difficult rival for Yanukovych, although recent polls show that almost any opposition leader (except the head of the Svoboda party Oleh Tyahnybok) could defeat Yanukovych in the second round. In this situation attempts to eliminate the most problematic candidates – Tymoshenko due to her sentencing, Klitchko due to fewer than 10 years of residency in Ukraine – appear extremely likely. Changes in the rules of the game such as the introduction of indirect presidential elections or their limitation to one round cannot be ruled out. Such a scenario is difficult to implement because it would require changes to the Ukrainian Constitution. However, the new law on referenda enables the Constitution to be altered without the consent of parliament. In addition, manipulation and fraud on or beyond the scale used in the October 2012 parliamentary elections are to be expected. In this situation only the combined efforts of a united opposition and an infuriated society are likely to be sufficient to achieve a result corresponding to the preferences of the populace. The 2012 parliamentary elections, in which the opposition parties won the proportional part of the vote, can be perceived as an indicator of the high level of support in society for an opposition candidate.

Conclusions and recommendations

Having in mind the situation in Ukraine as presented above, the EU should pursue a **three-tier approach** towards the country.

► Considering the significance and problematic nature of the upcoming presidential elections, the EU should **place a strong emphasis on the proper conduct of both the campaign and the elections themselves**. Problems observed in the 2010 local elections and the 2012 parliamentary elections should be highlighted and measures to prevent their repetition required. In close cooperation with the OSCE/ODIHR the EU should prepare not only to observe the elections, but also to provide the necessary human and financial resources should the result of the elections be legitimately challenged by the political opposition and/or large sections of society. Considering the dangers of a loss for Yanukovych and his regime, external mediation may be required to make a transfer of power a feasible option. Poland and Germany, as two member states seriously concerned about Ukrainian affairs, could prepare for this eventuality in cooperation with EU institutions. The issue should be discussed by Berlin, Warsaw and Brussels well in advance because unofficial diplomatic talks with Ukrainian authorities and all opposition forces on possible election outcomes and their implications should start long before the elections. As a preliminary, the EU should closely follow the repeat elections in the five districts with disputed results to be held on 15 December 2013. This will be an important

indication that even if the Association Agreement should be signed, the act of signature represents not the end of a process but rather one step on Ukraine's path towards stronger conformity with EU norms and standards.

► The second tier of the approach should go beyond the election-focused agenda to **deepen EU-Ukraine cooperation in essential and established fields**. The EU should have rather limited expectations vis-à-vis Yanukovich and his regime in the upcoming months. Considering the narrow and personal agenda of the Ukrainian elite described above, a realistic approach by the EU would be to concentrate on achieving genuine progress in three or four areas in which there appears to be enough overlap between EU and Ukrainian goals to obtain results. Obvious candidates would be the visa and energy realms, in which cooperation is well established, if slow to be carried out. Other possibilities would be measures to improve the investment climate and to ensure separation of powers. The EU will need to accept that it will have to invest quite a bit of time and energy for relatively small gains. This is due not only to lack of will and primacy of individual interests on the Ukrainian side, but also to the low administrative and coordinating capacity of the Ukrainian bureaucracy.

Perhaps even more fundamental will be to review the mechanisms of cooperation. Ukrainian bureaucrats and politicians are accustomed to a “simulation approach”, in which both interest in and implementation of policy in many areas are simply imitated without tangible results being attained (or even intended). The EU's aim should be to introduce methods of cooperation which are results-oriented and make it clear which actors are responsible for which steps in the process and in which time frame. An effective monitoring mechanism will be essential in this context. Furthermore, it will be necessary for the EU side to combat the attitude prevalent in the Ukrainian elite that it is up to the EU to “rescue” Ukraine, in particular after the Russian actions on the trade front in August. Responsibility needs to be evenly distributed on both sides, or even concentrated on the Ukrainian side where this seems appropriate.

► Finally, a third tier of EU policy towards Ukraine should **target the broader population**. By engaging more closely with Ukrainian society, the EU could help to build a foundation for a more stable relationship in the medium to long term, improve its own knowledge of Ukrainian realities and use that knowledge to better tailor its efforts to work with the Ukrainian grassroots. In recent years the EU has enhanced its awareness of and consultation mechanisms with civil society actors in Ukraine in particular and the Eastern Partnership countries in general. This has been beneficial both for the EU and a segment of Ukrainian civil society. However, the danger has arisen that an “NGO elite” will be created which will be increasingly distant from stakeholders within society and will focus more on a dialogue with the EU than on developments in its own country. Thus a broadening of contacts within Ukraine's very diverse civil society, especially outside Kyiv, would be desirable. In the context of the presidential elections in 2015 the EU could support Ukrainian civil society in its efforts to secure free and fair elections. A campaign focusing on increasing participation in the elections will also be crucial due to the above-mentioned widespread apathy in society. Polish and German NGOs working together could assist their Ukrainian partners in this area.

No EU action could make a stronger impression on Ukrainian society than the abolition of visas for Ukrainian nationals travelling to the Schengen countries. The EU should thus pursue a two-pronged approach. On the one hand, additional efforts should be undertaken to utilize the existing visa code and specific visa facilitation provisions to make obtaining a visa easier and to ensure that multi-year, multiple-entry visas are granted whenever possible. On the other hand, an attempt should be made within EU member states to dismantle the remaining obstacles - on both the governmental and the societal levels - to establishing a visa-free regime with Ukraine. This would pave the way for a speedy abolition of visas if and when Ukraine manages to fulfil its commitments within the action plan framework, thus linking the cooperation between Ukrainian and EU elites with tangible benefits on the societal level.

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