

The EU's Plan B for Ukraine

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MAY 2012

Once having put too much hope in Ukraine, the European Union now finds itself in a rather uncomfortable position. For the past five years, it has negotiated an Association Agreement with the country, the implementation of which would bring Ukraine closer to the union. And in March, the EU initialed the agreement. But today Ukraine seems to be further from the shared values espoused in that document than possibly could have been imagined.

Relations between Ukraine and the EU have reached their lowest point yet. And Kyiv is likely to take a number of new steps that could bring these relations to complete deadlock. Waiting for the Ukrainian parliamentary elections in the hopes that they will usher in improvement may not be the best approach. It could be time for the EU to come up with a Plan B.

Ukraine's Three Biggest Problems

Ukraine is not doing well today by any estimation. It has three main problems—President Yanukovich and his family (the Family), the imprisonment of former prime minister Yulia Tymoshenko, and the indifference of Ukrainians. The power of the Family is growing, making the lives of ordinary Ukrainians miserable and potentially threatening the existence of privileged oligarchs. Tymoshenko and her colleagues remain imprisoned, creating an atmosphere of fear domestically and driving Ukraine toward isolation from the West. And ordinary Ukrainians remain apathetic to their plight, as they neither trust politicians nor believe in their own power. None of this bodes well for a country seeking to get closer to the EU.

Yanukovich's performance does not warrant much room for positive assessment. Given the benefit of the doubt at the beginning of his term, he managed to concentrate more power in his hands than any of his predecessors through all possible means. He has the judiciary and executive firmly under his control. The Family, previously unknown outside its home region of Donbas, now has great weight in major policy decisions. And Family friends have been elevated to key positions in the government—the ministry of interior, the tax administration, the central bank—to cement control over the country.

While the Ukrainian economy is struggling, the Family's wealth has increased dramatically. For instance, the president's oldest son, Oleksandr, saw his wealth increase eighteen fold over the last year, and his name now appears on the list of the richest men in Ukraine. He made his money

through the “acquisition” of small and medium enterprises throughout Ukraine mainly with the “help” of tax authorities. Ordinary people, meanwhile, were left to foot the bill for painful reforms, such as those of the tax and pension systems.

Though the oligarchs have so far been left untouched, enjoying preferential treatment from the government during privatization processes or in aid handouts, the Family’s advancement and some of Yanukovich’s decisions indicate that things may be changing. Some of the oligarchs are starting to doubt their own future after the parliamentary elections scheduled for October 28. If they do not play by the rules of the administration or if their businesses are coveted by the Family, they may be the next targets. This could turn them into natural members of the opposition, yet it is too early to tell if they are ready to stand up.

The Yanukovich decision that has made the most waves is the trial against Tymoshenko and her former colleagues. Regardless of the reasons given for their prosecution, they are imprisoned today to act as proof of the president’s domestic power. Yanukovich is clearly afraid of Tymoshenko’s (and former interior minister Yuriy Lutsenko’s) return, if not for the 2012 parliamentary elections then for the 2015 presidential elections. The odds of the release, rehabilitation, and end of prosecution of Tymoshenko and her colleagues are close to zero in the foreseeable future. Tymoshenko’s chances of receiving medical treatment outside of Ukraine, perhaps in Germany as the two countries had discussed, are also slim.

Meanwhile, the masses are silent. Apathy and cynicism remain the two major diseases plaguing Ukrainian society. The people may not like what is happening in Ukraine, they may sympathize with Tymoshenko and other political prisoners (though as human beings rather than as politicians), and some may even flood the blogosphere with comments about prison-guard assaults on Tymoshenko. Still, they do not protest and remain more concerned with their own survival than politics.

Saved by the Parliamentary Elections?

The situation in Ukraine is unlikely to improve within the next few months. The country is waiting for October’s parliamentary elections. The importance of that event is hard to underestimate.

In light of the Tymoshenko case and the Family’s growing appetites, the way the vote plays out is ever more important for the president, his party, and the opposition. People close to the president suggest that in an ideal world, Yanukovich will secure a constitutional majority in the next parliament. If he cannot get enough votes through elections, after the poll, he will try to get them from directly elected MPs who are technically independent candidates but are in reality affiliated to a certain party. Having that majority would allow him to amend the constitution so that the parliament, not the people, would elect the president in 2015. In that case, the parliament may even vote him into office for life.

The shadow of Tymoshenko aside, the forthcoming elections are not going to be exceptional. Historically, a seat in the Ukrainian parliament is not the way to delivering on electoral promises but a ticket to immunity and access to the country's resources, which members of the president's party want. However, the number of seats on the party list and from "comfortable" districts (that is, those in the east where the core supporters of Yanukovich's Party of Regions are concentrated) is limited. The oligarchs and ordinary members of the Party of Regions are already having a tough time—within their own party—getting selected by Yanukovich for the ballot. Rumor has it that entry into parliament costs \$5 million these days. Yet, personal security and the possibility of accessing state resources are worth it.

The opposition, meanwhile, wants to believe it will change something if it gets into parliament. Under the current circumstances, however, the opposition needs to secure immunity from prosecution before they can make any changes. After a long period of frustration and mutual distrust, Tymoshenko's party, *Batkivshchyna*, and former parliamentary chairman and foreign minister Arsenii Yatseniuk's *Front zmin* merged. But it is unclear how much public support this entity will receive or how capable it will be of building alliances in the new parliament to prevent the emergence of a majority-wielding pro-presidential coalition.

Overall, it is too early to say if the elections will be free and fair. The law on elections was modified a year before the vote, not a month before, as happened with the 2010 local elections—a good sign according to the Council of Europe's Venice Commission. Another bit of good news is that the law was supported by some in the opposition.

Yet, there are clear indications that the president and his coalition in parliament are trying to play with the rules and not by the rules. The methods used to convince the opposition to vote for the new elections law remain questionable. The new law's reintroduction of a mixed system, with 50 percent of members of parliament elected from closed party lists and the other 50 percent from single-member districts in which the candidate with the highest number of votes wins, opens the door to electoral manipulation (remember the 1990s?). Another questionable decision, this time by the Constitutional Court, says that Ukrainians abroad can only vote for candidates on party lists.

And while support for the Party of Regions is falling (including in the east)—from 19.5 percent in April 2012 to 16.5 percent in May 2012, according to the Razumkov Center, an independent Kyiv-based think tank—support for opposition parties is not growing dramatically. With people tired of politics, election turnout is likely to be low. Those who show up will most certainly vote for or against certain personalities rather than parties' platforms and ideas. The poorest parts of the society are likely to be happy with the reappearance of directly elected members of parliament, as they usually give food and other types of pre-election support to their constituencies.

The results of these elections are hard to predict. Though this may move Ukraine closer toward electoral democracy, uncertainty about the outcome makes those in power impatient and more

prone to unconventional measures to get the results they want. The presence of the recently invited OSCE observers (and Ukrainian activists) may help prevent significant manipulation during the vote, but what really matters is what happens in parliament afterward. After all, the president could secure lifetime employment.

The EU Caught Off Guard

Ukraine is clearly still a far cry from Western hopes for the country. Based on its 2003 Security Strategy, the EU aims to build a ring of well-governed, stable, and secure neighbors to its east. The EU is also acting under the assumptions that the Ukrainian leadership (and its population) shares Europe's values and that the country wants and needs European integration. This may explain why the EU was caught off guard by the less-than-democratic developments in Ukraine in the last two years.

The EU made Ukraine the most generous offer it could. It spent five years negotiating an Association Agreement with Kyiv with the goal of political association and economic integration of Ukraine with the union. In March, it even initialed the document despite the reservations of some of its member states. That process is now on hold.

For a few years, and even recently, the EU believed that the agreement was a carrot for the Ukrainian leadership. Signing and ratifying the agreement were thus tied to improvements in the state of Ukrainian democracy—including the release of Tymoshenko and her colleagues—the rule of law, and independence of the judiciary. To officials in Kyiv, the agreement would be a good asset if given for free. Yet, they will not fight for the agreement by meeting Brussels' conditions.

The story gets even more unpleasant. After a few months of deliberations on whether to sign the agreement, the recent developments around Tymoshenko have pushed the union away from carrots and toward sticks. Ten EU heads of state refused to participate in the Central Eastern European Summit that was supposed to be hosted by Ukraine on May 11–15. As a result, Kyiv cancelled the event. German Chancellor Angela Merkel and other EU leaders said they would go as far as boycotting the EURO 2012 football championship, co-hosted by Poland and Ukraine, if the Tymoshenko situation does not change. The European Commission, in the meantime, also collectively decided not to attend the championship.

The EU leaders' response is emotional and reactive, which is easy to understand, as it stems from despair about the situation and yet hope that Yanukovich may decide to solve the problem. To these leaders, the prosecution of Tymoshenko, who as a former prime minister and the loser of the 2010 presidential election was already out of power, on political grounds does not make sense. Denying Tymoshenko and her colleagues the right to a fair trial is beyond comprehension, and forcing Tymoshenko to be taken to the hospital by prison guards crossed the last line.

But it is unlikely that officials in Kyiv will get the message. The absence of a number (or even all) of the high-level EU invitees at official events in Ukraine is met with nothing but irritation. Kyiv still believes that Ukraine is too important for the EU to walk away. At the same time, the president does not want the West to intervene in his domestic affairs. As one Ukraine commentator put it, “Yanukovich and his party will have to win elections in Donbas, not in Brussels or Berlin.”

The Ukrainian leadership prefers to project its way of doing business on the EU. It, for instance, blames Germany for using Tymoshenko as a pretext to take the EURO 2012 competition away from Ukraine. Yanukovich’s administration tries to spread rumors that the EU is only concerned with the economic interests of the EU. Some in Kyiv are even suggesting that the EU wants to get rid of Yanukovich to return the Orange Revolution team to power. When it comes down to it, the Ukrainian leadership does not believe that the EU is serious about its values. And there is not much anyone can do about it.

The EU will find little support for its stance among the Ukrainian people, who are far from grasping the potential impact of the Association Agreement on their lives—even the most advanced oligarchs are still trying to figure out the costs and benefits of the endeavor. The possibility that the Ukrainian population will support the EU’s boycott of official events is even slimmer. Most do not care about Tymoshenko and the presence of EU leaders at EURO 2012 ceremonies. Many Ukrainians, too poor to even attend the games, simply care about football. Others, as seen from the reaction in the media, do not want to be associated with Yanukovich and his misdeeds and thus feel offended that the EU would punish the entire country. Only a very small part of Ukrainian society would perhaps applaud EU leaders for standing up for its values and Tymoshenko.

While boycotting the Ukrainian leadership may provide a feeling of accomplishment today, it may not be strategic for the EU in the long run. The EU’s current Ukraine policy is based on old assumptions and its efforts—both the delay in signing the agreement and the suggested boycott of Kyiv’s official events—do not appear to be concerted. The EU’s need for a consensus among all 27 member states has left it with a lowest common denominator policy. If the EU wants a stable and predictable—yet democratic—neighbor, it will have to come up with a better plan for Ukraine.

What the EU’s Policy Should Be

EU leaders must come to terms with the fact that for the president and the Family, it is easier and safer to keep Tymoshenko and others in prison. This is no bad dream; it is a difficult reality. The EU should also seriously think about its strategy. Building policy on the assumption that the Association Agreement is a good carrot for the Ukrainians will not do. The agreement and other incentives—such as aid for the government—may need to wait for better times. All discussions on future steps in these two areas should be shelved for now. That does not necessarily mean waiting until the 2015 presidential elections as some opposition leaders might suggest. Ukraine may not even have nationwide presidential elections or a new president.

Ad hoc boycotts are not enough. The typical steps, such as taking away EURO 2012 and establishing visa-ban lists for prosecutors and judges, will also not do. The championship is what matters to ordinary Ukrainians. And implementing visa bans that do not include the president, the Family, and key oligarchs will not have any effect. Moreover, a struggle to find consensus on these issues—and all possible related battles within the EU—will only add to EU's weak image in Ukraine.

Perhaps the most effective step would be to scrutinize the financial and other assets of the Family and oligarchs that are held in EU countries. Cyprus would be the perfect place to start—if the EU can drum up the political will and the means. To really have an impact, however, the EU will have to go all the way and freeze those assets.

Still, that measure may not address all of the issues at hand. It could help get Tymoshenko and her colleagues out of prison, but it may not ensure that no new cases are brought against them in the future. It could prompt the president to agree to fully free and fair elections. Yet, it may not stop Ukraine from getting a president for life just a few months after the vote.

The EU should also concentrate on its communication with the Ukrainian population—through diplomatic channels, the media, and civil society actors. All messages to the Ukrainian leadership should be explained to the Ukrainian people. Simply making policy announcements will not be enough; the EU must repeatedly explain its reasoning. European values in particular should be expressed in every message to Ukrainians. As a long-term step, the EU should also offer more—and better quality—aid to Ukrainian citizens, such as double the number of scholarships for its students.

In addition, the EU should finally set clear boundaries for the Ukrainian leadership. So far, those boundaries have not been clearly defined, with rather vague requests to improve the rule of law or the independence of the judiciary. Even the messages about Tymoshenko were rather mixed, ranging from calls for her release to her participation in elections to no further trials against her—mentioned together and separately. The EU should define and communicate what it wants from Yanukovich. It should also come up with a list of clear conditions—from free and fair elections and the criteria by which those votes will be assessed to benchmarks on reform of the judiciary, and so on.

Last but not least, the EU should define a clear timeline for officials in Kyiv to make necessary changes. That deadline may still be the parliamentary elections or the next EU-Ukraine Summit at the end of the year.

If this does not work, it may be time to, for instance, talk to the Russians about ways to bring more stability to the region. Or perhaps the best option will be to let Ukraine drift where it drifts. The EU can only help those states that want to be helped—is Ukraine one of them?

About the Author

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