

Ukraine, the European Union and the Democracy Question

Geoffrey Pridham*

Abstract: *Recent political developments in Ukraine call into question its democratisation process. For this reason, it is important to consider EU relations with that country as offering a possible protection against full democratic inversion. Two problems are considered: the continuity of EU policy towards Kyiv; and, the scope for EU influence in furthering democratic standards. In the light of patterns since the Orange Revolution in 2004, the political outlook for EU/Ukraine relations appears unpromising.*

Keywords: *Orange Revolution, democracy, European Neighbourhood Policy (ENP), membership, Eastern Partnership, Ukraine.*

Recent political developments in Ukraine increasingly suggest a case of democratic inversion, whereby regime change in favour of a new democracy is checked then redirected towards some non-democratic model, though not necessarily reverting to the previous type of authoritarian regime. There are some significant other examples of this particular tendency in post-Communist Europe, including Belarus under Lukashenka and of course Russia under Putin. Such inversion has usually occurred in former Soviet republics, suggesting a commonality of more difficult Communist legacy problems for democratisation compared with those states in East-Central Europe (ECE) that have joined the EU and achieved democratic consolidation. Ukraine may be turning into another such example, although the international jury is still officially out on this matter. But that country has differed from Belarus and Russia in that it has advanced along the path of European integration as the frontrunner within the framework of the European Neighbourhood Policy (ENP) and the Eastern Partnership, both EU programmes aimed at developing closer links with Eastern European countries outside the EU's borders following the enlargements to post-Communist countries in 2004 and 2007. One dimension of those programmes has been the furtherance of democratic standards in the countries concerned.

In its Freedom in the World rankings for 2011, Freedom House downgraded Ukraine from "free" to "partly free", a significant change as until then Ukraine had been the only non-Baltic former Soviet republic to enjoy the category of being "free". The recently published report by Freedom House on the state of democracy and human rights in Ukraine (April 2011) summarised the main international concerns:

... a number of actions and developments since Yanukovich became president suggest that the country is heading away from a democratic consolidation. Concentration of power, selective prosecutions of political opponents, a more intrusive SBU [Security Service of

* **Geoffrey Pridham** is Emeritus Professor and Senior Research Fellow at Bristol University, UK. He has for long worked on problems of democratic transition and consolidation in post-Communist states and especially on the influence of the EU on democratic standards there through its political conditionality and enlargement policy, with special reference to Slovakia, Latvia and Romania. E-mail: g.pridham@bristol.ac.uk

Ukraine], the absence of checks and balances and the politicisation of the judicial process are the main concerns observers cite... At the same time, it would be premature to write off Ukraine as a hopeless cause' (Freedom House, 2011: ii and 17).

Similarly, the European Commission's country report on Ukraine for 2010 concluded a month later that 'as regards the political domain, there are fewer positive signs', indicating that 'Ukraine has experienced a deterioration of respect for fundamental freedoms notably as regards the freedom of the media, freedom of assembly and democratic standards' (European Commission, 2011: 3).

If this new political tendency since Yanukovich's replacement of Yushchenko as President in February 2010 is confirmed in the future, it would represent a further redirection in Ukraine's non-linear even zigzag course in regime change since the end of the Soviet Union, two decades ago. Yushchenko's own election as President at the time of the Orange Revolution in 2004 represented a dramatic attempt to restart democratisation following the hybrid regime (i.e. semi-authoritarian) practices under his predecessor Kuchma; but now, some of the latter's forms of repression have reappeared.

Given the EU's evolving relationship with Ukraine, especially from the Orange Revolution and Ukraine's own repeated aim to join the EU, it has to be asked in the light of these regime change redirections whether EU policy towards that country has changed significantly – a relevant question in the light of the ENP's and the Eastern Partnership's requirement of democratic standards. Furthermore, what scope has there been for the EU to promote those standards in Ukraine and does it have any chance of influencing current political developments there in favour of a renewed democratisation trajectory?

EU Policy towards Ukraine since the Orange Revolution: Change or Continuity?

Under President Kuchma, relations with the EU developed with a Partnership and Cooperation Agreement in 1994, ratified finally in 1998, from which time Kyiv expressed an interest in EU membership. However, the Kuchma regime's lack of democratic credentials blocked any such ambition while revealing its own limited understanding of EU affairs. Kuchma's impatience with Brussels' unforthcoming 'signal' about Ukraine's future relationship with the EU, together with his worsening relations with the West following the murder of the opposition journalist Hryhorij Gongadze in 2000, led to his re-emphasising links with Russia and abandoning the idea of EU membership. As it was, the country's democratic deficiencies under President Kuchma allowed Brussels to avoid any futuristic decisions about that country's relationship with the EU; but the Orange Revolution forced Ukraine abruptly onto the EU's agenda. Ukraine's international visibility rose dramatically with that event because of the euphoria induced abroad following the electoral defeat of the old-order elite under Kuchma, with Yanukovich as their presidential candidate by the reformists led by Viktor Yushchenko and Yulia Tymoshenko. A report at the time by the Brussels-based Centre for European Policy Studies predicted that this revolution would have 'profound consequences' for Europe and for the EU's relationship with Ukraine.¹ In hindsight, this statement occasions however much scepticism.

¹ Euractiv internet report, 13 December 2004, www.euractiv.com.

The Orange Revolution and Yushchenko's election as President certainly led to a revival of Kyiv's EU hopes; but an unrealistic optimism ensued, particularly as the new President pushed for membership prospects doggedly once in office. He was determined on this count to break with the negative trends of the late Kuchma years. With great enthusiasm he launched an initiative pointing towards EU membership as the top priority now that the Orange Revolution presented a "different Ukraine" with new democratic credentials, pressing for entry talks starting in three years' time²; and there followed a flurry of visits by him to Brussels and EU national capitals. Despite the EU's cautious approach, already evident soon afterwards, Yushchenko continued to press for a target date for full membership (at one point in February 2005 claiming that Ukraine could join by 2011) as this would strengthen his domestic position for introducing the political reforms. Yushchenko publicly expected 'analogous steps' from the EU after democratic changes in his country and, later, emphasised that Ukraine was guided by "European parliamentarism" asserting that the forthcoming elections (those of September 2007) could be 'a celebration of Ukrainian democracy and our determination to pursue a European path'.³

During the period since the Orange Revolution the EU has struggled to develop a new relationship with Kyiv while working within the restrictions set by its own policy under the ENP. It is important, therefore, to examine its policy in this period as it has a bearing on the question of political change and political reforms. In doing so, account must be taken both of its general policy lines and particular factors influencing its approach to Ukraine.

ENP countries are in a different situation from accession and association states, not least because emphatically they have no "membership perspective". EU political impacts are obviously less intensive since these countries are much less 'locked into' the integration process without any real deadline or escalator pressure. Ukraine is now unique among these countries in moving towards association status, this being a reluctant concession from Brussels but still without a "membership perspective". That is because the Eastern Partnership repeats the ENP's exclusion of this perspective while moving cautiously along the path of further engagement with integration questions. These countries were therefore in a different category for Brussels behind the Western Balkan countries which were now the focus of a difficult further enlargement for quite some foreseeable time.

The ENP group have been less politically advanced than even the Western Balkan countries in terms of democratic standards for they embraced a wide spread of countries (from the South and East Mediterranean as well as the Caucasus and a few European ex-Soviet republics), many of which could hardly be called democratic. As one interim evaluation of political reforms under the ENP concluded, most countries showed extensive human rights abuses, no democracy and were poor. There were some signs of worsening here over the previous decade so that, compared to the 2004 EU entrants as they were in 1993, the ENP countries were at much lower starting points of democratic development (Kelley 2006, pp. 41-44). Even taking the six ex-Soviet republics embraced by the later Eastern Partnership policy (Ukraine, Moldova, Azerbaijan, Armenia, Georgia and Belarus), the same point could be made though with some differentiation between them: Ukraine and Georgia were obviously more advanced than Azerbaijan and Belarus both of which evidenced hardly any political reform. Hence,

² Euractiv internet reports, 13 December 2004 and 24 February 2005, www.euractiv.com.

³ *European Voice*, 24 February 2005 and 12 July 2007.

these particular countries had a long way to progress before they could be taken seriously on political grounds as having eventual membership prospects. They had in common a Soviet past involving a greater degree and depth of Communist experience than ECE and even the Balkan countries, with negative consequences for the functioning of the state, the potential for developing autonomous political organisations and of course for political culture. Ukraine perhaps along with Georgia was the only “frontrunner” in this small group but that made little difference when its official scope for moving up some integration escalator was strictly limited by ENP policy restrictions. Ukraine in particular felt frustrated by being categorised in this way and apparently held back by politically less developed countries.

However, there was an inherent ambiguity with the ENP which drew on enlargement policy up to that time, its own policy thinking having been formulated by former DG Enlargement staff transferred to the ENP unit in DG External Relations.⁴ While the ENP was introduced as ‘not an enlargement policy’ by the External Relations Commissioner⁵, it nevertheless resembled that policy in certain respects. This was reflected in the use of progress reports to monitor performance over reforms set out in the action plans (which were modelled on the association agreements used for the 2004 accessions), in the choice of specific political reforms as well as in the rhetoric about underpinning post-Communist democratisation and generally in the strategic use of conditionality and socialisation approaches, such as in the adoption of incentives in the former instance and of political dialogue and engagement with domestic actors in the latter (Kelley 2006, pp. 30-34). The ENP was for this reason described (even by Commission officials) as variously ‘a diluted version of enlargement policy’ or simply as ‘enlargement light’.

During 2008-09, the Eastern Partnership came into being following an initiative from Poland and Sweden to upgrade relations with the Eastern neighbour countries, thus responding to Ukraine’s objection to being bracketed with non-European countries that were less developed politically and economically. The crisis in August 2008 over Russia’s invasion of Georgia significantly speeded up this new initiative overcoming the resistance of certain key member states like France and Germany.⁶ While aiming at a ‘more ambitious partnership’ with them and promising to ‘go beyond ENP’, it nevertheless replicated many of the latter’s features including bilateral and multilateral arrangements and the continuing exclusion of a “membership perspective”. New points included more involvement of civil society such as in monitoring the action plans and the possibility of association agreements including free trade; but generally the Eastern Partnership was seen as not overcoming the ENP’s main weakness which was the limited credibility of incentives for political change (Boonstra and Shapovalova 2010, p. 12).

Nevertheless, the new Partnership was officially presented as offering ‘a substantial upgrading of the level of political engagement’ and ‘more intensive assistance’ with these countries’ reform efforts⁷. As to the demand for political reforms, ‘the principle of the ENP will be maintained: how far we go in relations with each country will continue to depend on

⁴ The ENP was initially managed under DG Enlargement until the change of European Commission late 2004 when it was transferred to DG External Relations (Wissels, op.cit).

⁵ Euractiv internet report, 13 December 2004, www.euractiv.com.

⁶ Author interview with Nozar Bobitski, First Secretary for Political Affairs, Ukraine’s Mission to the EU, in Brussels, November 2008.

⁷ European Commission, ‘The Eastern Partnership – an ambitious new chapter in the EU’s relations with its Eastern neighbours’, press release IP/08/1858, 3 December 2008.

the progress made by the partners in their reform and modernisation efforts'.⁸ Therefore, there was an element of actual conditionality present although not so highlighted as in enlargement policy. For instance, association agreements were possible but only on the following condition: 'a sufficient level of progress in terms of democracy, the rule of law and human rights and in particular evidence that the electoral legislative framework and practice are in compliance with international standards, and full cooperation with the Council of Europe, OSCE/ODIHR and UN human rights bodies will be a precondition for starting negotiations and for deepening relations thereafter' (European Commission 2008, section 3.1). Such association agreements would take the question of political reforms a stage further because of their legally binding nature (unlike with the ENP's action plans) and the promise of enhanced monitoring thus creating a somewhat greater pressure for implementation although one well short of enlargement policy. In the case of Ukraine's planned association agreement, mechanisms from other EU association agreements were adopted such as benchmarking, monitoring and evaluation procedures and the focus would be on precise, demand-driven priorities for political reform in place of the rather general nature of the ENP's progress reports on the action plans (Shapovalova 2010, p. 70). This agreement thus represented a further narrowing of the gap between the original ENP and the EU's enlargement policy.

But the gulf between Kyiv's high expectations under Yushchenko and Brussels' cautious approach towards Ukraine remained throughout this decade. The virtual co-timing of the EU's ENP agreement with Kyiv and the beginning of the Orange Revolution meant the EU was reluctant to renegotiate its terms. This cautious line also avoided any re-categorisation of Ukraine in relation to other post-Communist states. From the time of Ukraine's independence in 1991 Brussels has included Ukraine alongside other ex-Soviet republics (the so-called Newly Independent States) and therefore separate from its Western neighbours, the ECE countries (Solonenko 2009, p. 711). This categorisation remained long after the Orange Revolution and became a source of official resentment in Kyiv, as when Hryhorij Nemyria, later deputy prime minister for European integration and at that time working in the Prime Minister's office, remarked acridly in 2005: 'Ukraine has occupied a firmly peripheral place in the mental map of the EU bureaucracy' since that 'succumbed' to "Ukraine fatigue" in Brussels which had set in under Kuchma; and, as a result, 'the European political mainstream, in general, became comfortably reconciled to the increasing institutionalisation of Ukraine's peripheral status as a country "muddling through" on the margins of Europe' (Nemyria 2005, p. 57).

Various key reasons motivated the EU's refusal to place Ukraine in a more encouraging category, most of them familiar to Brussels watchers though not all declared publicly by the Commission; but their relative importance has varied over time somewhat. Three were voiced in the EU's weekly newspaper soon after the Orange Revolution: the problem of 'enlargement fatigue', the desire to avoid a "Turkey syndrome" (meaning a much delayed and lengthy accession process causing frustration on both sides as well as a concern about the country's size and its impact on the 'depth' of European integration) and a wish not to upset Russia (where, in policy circles, sentiments about the former Soviet relationship with Ukraine were still rather influential)⁹. Statements from the Commission were from the beginning of the Orange Revolution dismissive about an important breakthrough about Ukraine's future EU prospects

⁸ European Commission, 'Eastern Partnership', press release MEMO/09/217, 5 May 2009.

⁹ *European Voice*, 10 March 2005.

as in the guarded statements at this time of the new External Relations Commissioner Benita Ferrero-Waldner. This cautious line was repeated more colourfully by Commission President Jose Manuel Barroso in autumn 2006, when he said that reception into the EU's 'living room for the time being is out of the question' but 'a heated waiting room' had to be set up where one may stay for one or two decades, with 'an open door to the drawing room' for 'firstly, Ukraine is not ready; secondly, we are not ready'.¹⁰

Brussels' reservations were firmly maintained through the rest of this recent decade, as underlined by author interviews with Commission officials in 2007-08. One member of the EU Delegation to Ukraine acknowledged that officially only 'enlargement fatigue' was given as the main reason but admitted that the other reasons suggested to him – a tougher enlargement policy over standards since 2004, the priority here to the Western Balkans, the large size of Ukraine and the Russia factor – were all important.¹¹ An official of the Commission in Brussels elaborated on one of these reasons saying that 'the EU already has a lot on its plate with the Western Balkans and Turkey' and speculated on the awkward problem of 'how to cope with the situation if Ukraine overtakes Turkey'.¹² Meanwhile, a senior member of Ukraine's Foreign Ministry responsible for European policy granted at this same time that 'the EU cannot easily absorb the new member states' but added that domestic conditions played a significant part, confessing that the 'young age of Ukrainian democracy' was a factor, implying a certain political immaturity, for 'we ourselves give excuses to EU politicians' and 'our politicians [need to be] a bit more wise'.¹³

He was also aware that the EU had 'problems in reaching consensus'. In fact, the cautious EU policy approach towards Ukraine and ambiguities in ENP policy owed much to differences within the EU itself at two levels. Firstly, there were wide differences among the member states over how far to take the relationship with Ukraine following the Orange Revolution. As a Commission official noted, the 'twenty-seven member states have different viewpoints on Ukraine', with Germany 'having an eye on the budget' and France and the Netherlands plagued by 'enlargement fatigue' (a term much employed by Commission staff at this time in the relevant directorates-general).¹⁴ Some differences were marked with the new member states from post-Communist Europe noticeably more sympathetic, including some conceding a "membership perspective", than the so-called old member states (i.e. those that had joined up to and including 1995). Among the former, Poland stood out because of that country's geographical and historical closeness to Ukraine, combined with a desire to secure a stable pro-West eastern flank; and to some extent this also applied to Lithuania. On the other side there were member states like Germany and France, influenced by giving a priority to relations with Russia and decidedly against any flexibility with even a hint of future membership. While there were some differences of emphasis and degree of sympathy among both groups (e.g. the UK was less rigidly opposed than some old member states to developing a new relationship with Ukraine), these divisions between the member states have persisted up to the present.

¹⁰ *Frankfurter Allgemeine Zeitung*, 30 October 2006.

¹¹ Author interview with a political officer of the EU Delegation to Ukraine, in Kiev, September 2007.

¹² Author interview with an official in DG External Relations, European Commission, in Brussels, November 2008.

¹³ Author interview with Vadym Triukhan, Deputy Director-General, DG for the European Union, Ministry of Foreign Affairs, in Kiev, September 2007.

¹⁴ Author interview with an official in DG External Relations, European Commission, in Brussels, November 2008.

They have reappeared during negotiations over the association agreement, with key old member states disputing the title and definitely against a “membership perspective” being attached.¹⁵ Concurrent difficulties with Romania and Bulgaria over precisely issues of political conditionality both before and after their admission to the EU in January 2007 only strengthened resistance to movement over a “membership perspective” elsewhere. Indeed, some member states like Germany had been opposed to these two Eastern Balkan states joining at this stage.

Secondly, there were distinctive differences among the main EU institutions with the European Parliament by far the most positive about a new relationship with Ukraine, including eventual membership subject to appropriate conditions. Within weeks of the Orange Revolution, the EP passed a resolution on 13 January 2005 by a great majority of 467 to 19 in favour of ‘other forms of association’ apart from the ENP, giving ‘a clear European perspective’ for Ukraine ‘possibly leading ultimately to the country’s accession to the EU’ (Wilson 2005, p. 191). During the period since then the EP has remained the most forward source of pressure among the EU institutions for giving more active support to democratisation in Ukraine with some differences of emphasis among the main political groups (there were at the same time demands for more progress in that country over such issues as human rights and fighting corruption). With the move towards an association agreement, the EP recommended to the Council that it include in the long term ‘the attainment of EU membership’ as well as the abolition of the visa regime and increased financial assistance (Shapovalova 2010, p. 67).

Somewhat by contrast, the Council of Ministers and the Commission remained as a rule limited in their responses to developments since the Orange Revolution. While the EP advocated EU initiatives to encourage and stimulate Ukrainian democratisation, the two executive institutions adopted the opposite logic that the ball lay in Ukraine’s court. As Javier Solana, the EU’s foreign policy representative, remarked at the EU/Ukraine summit in September 2007, the deepening of the relationship with the EU ‘remains dependent on the quality of Ukraine’s democracy and reforms’.¹⁶ That summit ended with a joint statement that further movement towards democratic consolidation would reinforce ties with Ukraine and that there was a need to improve the business and investment climate through progress on the rule of law, judicial reform and the fight against corruption.¹⁷ Sometimes impatience was voiced as when Commission President Barroso urged Ukraine in autumn 2005 to push ahead with reforms rather than talking about membership¹⁸; and then in late 2009 he revealed Brussels’ frustration with Kyiv when he commented: ‘it often seems that commitments on reform are only partially implemented and words are not always accompanied by action’ (ICPS, 2009: 4).

It was clear from the beginning after the Orange Revolution that any loosening of member state attitudes, especially the old ones, would only occur if Ukraine’s performance over the required political reforms proved unexpectedly impressive. A Stefan Batory Foundation study in spring 2005 remarked with some prescience but more optimism than was justified by later developments: ‘If Ukraine were to introduce significant reforms, a change in sentiment towards Ukraine in several member states could be expected in 2006’ (Stefan Batory Foundation 2005, p. 32).

¹⁵ *European Voice*, 17 July 2008 and *Frankfurter Allgemeine Zeitung*, 22 July 2008.

¹⁶ *European Voice*, 20 September 2007.

¹⁷ EU-Ukraine Joint Statement, 14 September 2007, www.eu2007.pt.

¹⁸ RFE/RL Newsline, 7 October 2005.

The general problem that soon came to dominate Kyiv's relations with the EU was domestic instability. By late 2005 an additional reason for Brussels' caution – Ukraine's own internal political divisions at the top, by now more visible – was often quoted.¹⁹ Commission statements about Ukrainian affairs underlined at intervals how important it was for this to be resolved before the reform process could be continued and hence relations with the EU 'deepened'. Government crises and collapses caused some concern, one of these occurring just before an EU/Ukraine summit (in September 2008), because they were seen in Brussels as hindering or undermining reforms. In spring 2007, a major political crisis erupted in Kyiv with the collapse of government business and the President's controversial decree dissolving the parliament, the legality of which was disputed by his domestic opponents. The EU put excessive pressure on Ukrainian politicians to settle their differences and re-establish political stability, with Barroso calling for a solution 'in full respect for the principles of democracy and the rule of law'.²⁰

The issue that highlighted this domestic instability at home and especially abroad was the bitter antagonism that developed between the two Orange Revolution leaders, Yushchenko and Tymoshenko, especially when they respectively held the offices of President and Prime Minister (during 2005 and from 2007-10). According to a close observer of this power struggle, it was a clash of personalities but also of outlooks: Yushchenko was seen as liberal, very pro-EU and pro-NATO, as well as interested in wider questions like religion, history and identity questions, while Tymoshenko was regarded as more pragmatic, open to making deals with anybody, a good administrator and able to talk with Putin unlike Yushchenko.²¹ The EU took a firm decision, however, not to intervene over this power struggle; furthermore, Kyiv did not request such mediation.²²

This persistent instability and the failure of the Orange Revolution leaders to build on their success of ejecting the Kuchma government in late 2004 led to a cooling of EU attitudes towards Ukraine and a growing "Ukraine fatigue" in Brussels. This created an image problem for the country which undoubtedly affected any willingness on the part of the EU to give Ukraine the benefit of the doubt and to consider seriously a new future for that country in Europe. This problem was stated quite bluntly by the Kyiv-based International Centre for Policy Studies (ICPS) in 2010:

'Ukraine mainly elicits distrust, fatigue, disappointment and irritation... [a] feature of national politics that leaves Europeans less than interested in cooperating with Ukraine is the country's high total failure to come through on its commitments, including some of the simplest... All this makes it difficult for Brussels to take any statement coming from Kyiv seriously, let alone spend time and money on an unreliable, uncommitted partner... So, two of the greatest threats to Ukraine's relations with the EU are the irresponsibility of its politicians, who seem unable to respect their commitments, and political chaos within the country' (ICPS 2010, p. 42).

¹⁹ *European Voice*, 10 March 2005 and 24 November 2005.

²⁰ Euractiv internet report, 4 April 2007, www.euractiv.com; *International Herald Tribune*, 17 April 2007.

²¹ Author interview with Oleh Rybachuk, Yushchenko's former chief of staff and Deputy Prime Minister for European Affairs 2004-05 in the Tymoshenko Government, in Bratislava, September 2009.

²² Author interview with European Commission official in DG External Relations responsible for some ENP countries including Ukraine, in Brussels, May 2007.

Clearly, then, what has happened since the Orange Revolution has been an increasing gulf between the stated and real ambitions of government leaders to join the EU eventually and the reluctance of EU policy makers – with some committed exceptions – to make any move in that direction.

Nevertheless, negotiations went ahead for a new agreement to replace the Partnership and Cooperation Agreement (PCA) of 1998 which lapsed in 2008; but without any “membership perspective”. Then, a new development had occurred in Kiev with the election of Yanukovich as President in early 2010. As the year progressed, infractions of democratic standards aroused growing concern in EU circles and these were openly expressed in the European Parliament.²³ While this new trend did not disrupt the management of detailed integration affairs between Brussels and Kyiv, it did however call into question for the first time since the Orange Revolution the process towards democratic consolidation which was the ultimate aim of the EU-required political reforms. And clearly it effectively shelved for the foreseeable future any talk of long-term membership of the EU.

Altogether, it could be said that EU policy towards Ukraine from 2004 showed much more continuity than change. No radical departure was ever envisaged and the continuing and firm insistence on excluding a “membership perspective” was the best proof of this. Any change was slowly incremental and somewhat reluctant in various quarters although enough initiative was taken to keep relations moving along, as in the construction of the Eastern Partnership under which heading an association agreement was possible. In other words, new directions in the course of Ukraine’s regime change had no immediate or indeed powerful impact on the EU’s policy towards that country. That policy insisted that any breakthrough in relations would have to come from real democratic progress but that was not sufficiently forthcoming or convincing for Brussels.

Relations with the EU and the Prospects of Democratic Standards

Given the EU’s restricted if fairly consistent approach towards Ukraine since 2004, what scope has there been for Brussels to influence Kyiv over that country’s democratic development? It has to be said at once that any such scope was inevitably limited since the deliberate and rigid exclusion of a “membership perspective” substantially weakened the EU’s leverage in driving political reforms in ENP countries. According to a European Commission, officially involved in formulating the ENP, the EU had little leverage over the New Neighbours concerning political conditionality for the Copenhagen criteria could not be applied and membership was not being offered so that Brussels fell back on referring to relevant conventions signed by these countries such as those of the Council of Europe.²⁴ The 2004 enlargement process, just then concluded, had demonstrated that accession countries from East-Central Europe had been willing to go quite some way to satisfy Brussels over European political standards for the sake of acquiring EU membership, which held enormous prestige in these post-Communist countries. However, there were problems in implementation especially over difficult issues like judicial reform, fighting corruption and, to some extent, improving human and minority rights due to intrinsic

²³ Euractiv internet reports, 15 February 2010 and 7 October 2010, www.euractiv.com.

²⁴ Verbal presentation by Rutger Wissels at conference on “The Challenges of the European Neighbourhood Policy”, Foreign Ministry, Rome, 26 November 2004.

difficulties in bringing about change, the relative brevity of time allowed during accession and some resistance from governing elites where their party and material interests were challenged (Pridham, 2005). Such problems should be kept in mind when comparing with countries that had no “membership perspective”.

The absence of this has been for Kyiv a major factor governing relations with the EU, as regularly voiced by government leaders and officials in this period. According to an official of the EU delegation in Kyiv, asked whether the implementation of the action plan was weakened by the lack of this “perspective”: ‘Yes, Ukraine regards everything from the point of view of membership; I get the message from government officials that Ukraine would be more assiduous concerning political conditionality’.²⁵ The Director of the EU Department in the Foreign Ministry answered volubly when asked the same question: ‘Absolutely, if you are in the accession process, you have a big real incentive; because you have the membership perspective... some reforms are painful’.²⁶ He said this despite the point being made that Ukraine had in substantial terms advanced significantly in its engagement with practical integration matters. While political will to meet political standards seemed to be affected, various domestic conditions had also to be taken into account in this context.

Ukraine’s political elite has generally been criticised both for its disunited position on aspects of post-Communist regime change. Such disunity extended to a lack of real consensus on the constitutional rules of the democratic game and was reflected in an elite political culture which had not yet come to embrace the values of tolerance and compromise (Solonenko 2009, pp. 720-21). To a large extent educated in Soviet institutions, the political class revealed a strong continuity with little generational turnover although some younger figures did emerge in the years after the Orange Revolution, which event encouraged some new policy thinking and a more assertive attitude in favour of democratisation. But such cases of “reconstructed” adjustments to a democratisation trend have not been widespread in Ukrainian politics.

It followed that achieving elite consensus on the political reforms demanded by Brussels would be difficult. Evidence of European socialisation was weak in terms of an element of commitment to reforms penetrating elite mentalities. While there was an official agreement on the broad lines of European policy, a Kyiv policy institute commented rather pointedly on the problems of elite understanding of European integration:

‘What exactly European integration means is poorly understood in Ukraine – not just by ordinary voters but also, unfortunately, by those who are supposed to organise, direct and promote the process. That 90% of the homework is actually internal has long been clear. Yet most of Ukraine’s politicians think that European integration can be speeded up simply through negotiations with Eurocrats... However, the recipe for successful integration – actual internal reform – is more complicated’ (ICPS 2010, p. 41).

Such weak understanding of integration matters had been sometimes present in accession countries at an early stage of their dealing with EU affairs, but at least they developed a solid understanding albeit one confined to a small group of crucial policy-makers with policy learning during membership negotiations. Combined with division at the centre of European policy making in Kyiv, this weakness of policy understanding did pose a basic problem for

²⁵ Author interview with official of the EU Delegation to Ukraine, in Kiev, September 2007.

²⁶ Author interview with Pavlo Klimkin, Director of EU Department, Ukrainian Ministry of Foreign Affairs, in Kiev, April 2008.

pushing through necessary reforms. Reformers who did emerge after 2004 in government or administration circles found themselves rather isolated domestically. Generally, political elites preferred to ignore or evade the EU's top-down demands on reforms (Gawrich, Melnykovska and Schweikert 2010, p. 1221), instead prioritising immediate political and economic benefits which rather worked against change, as a policy institute noted: 'Generally speaking, there is consensus among Ukraine's leading political forces that EU integration is a strategic choice for the country; yet very few politicians are ready to give up their local interests for the sake of better rules of the game for all, based on European standards' (ICPS 2009, p. 4). For this reason, on the EU side, it was often found that engagement with Ukraine's political class 'has proved expensive and mostly fruitless'.²⁷

Another domestic factor which affected Kyiv's response to Brussels' political demands especially over implementation was the condition of the state administration. This was largely unreformed from Soviet times and hardly capable of interacting efficiently with Brussels because of quite different working methods and ethos. Serious tension arose in the face of repeated EU pressures for change, all the more as frequent governmental instability meant that implementation of the action plan under the ENP became a devolved responsibility for bureaucratic rather than political actors in Kyiv (Wolczuk 2007, p. 19). According to a recent report by the ICPS, 'Ukraine has made one huge step towards political and economic liberalisation, but the other foot is stuck in the 1970s, in unreformed Soviet public institutions' (ICPS 2010a, p. 1). The scale of domestic change required in post-Soviet states was distinctly larger than in the ECE countries in the 1990s and that their weaker state capacity meant greater obstacles for enacting EU conditionality (Wolczuk 2007, p. 4).

Changes required for both managing EU relations and implementing conditionality measures included the professionalization of and much improved efficiency in the national administration, better coordination between different ministries to manage Brussels' cross-sectoral demands but also a certain cultural change among bureaucratic personnel, where generational turnover was likely to help. It was made clear in Ukraine's case that basic change was necessary; but this has been very slow in coming. In April 2010, an ICPS report emphasized that changes introduced by the new association agreement 'will require the entire state machine to perform at a fundamentally new level' (ICPS 2010b, p. 1). There was an urgent need for assistance in coping with the vast amount and the detailed technical side of EU affairs; and there were complaints in Kyiv that the EU was not forthcoming with 'the kind of advice, conditions and requirements' necessary in this respect (ICPS 2010c, p. 3). Adverse comparisons were made with accession states that received far more such technical assistance.

As it was, the programme of political reforms required by Brussels was fairly ambitious drawing directly on the requirements of enlargement policy. They were based on the ENP's "shared values" and covered broadly liberty, democracy, respect for human rights and fundamental freedoms and the rule of law.²⁸ More specifically, they included 'strengthening democracy and the rule of law, the reform of the judiciary and the fight against corruption and organised crime, respect for human rights and fundamental freedoms, including freedom of the media and expression, rights of minorities and children, gender equality, trade union rights

²⁷ *European Voice*, 18 February 2010.

²⁸ Council Conclusions on Wider Europe – New Neighbourhood, Euromed Report, issue no. 61, 18 June 2003.

and other core labour standards and the fight against the practice of torture and the prevention of ill treatment` (European Commission 2004, p. 13). Altogether, these “values” represented a selective agenda for democratic consolidation in ENP countries; but this lacked the rigorous approach of an enlargement conditionality policy as well as the decisive push that came from real accession prospects.

The ENP certainly saw itself as aiming to promote democracy (after its own fashion) and as targeting unstable post-Communist states that were struggling with democratic consolidation; but in fact, the term “democracy” was used hesitantly in official statements on the ENP and this objective was not seen as being prioritised among the different policy goals as it was in enlargement policy (notably in opening and concluding membership negotiations).²⁹ Furthermore, there was a certain permissive attitude over the satisfaction of the political reforms in that the terminology used was that of “cooperation” rather than the imposition of standards usual with countries that had acquired candidate status. The most vocal criticism of this restrained approach of the Commission came from the European Parliament which in a resolution on the ENP in January 2006 admonished the Commission and urged it to `operate a vigorous policy of support for democratic forces’ in neighbouring states; while individual MEPs have criticised the Commission for placing too little emphasis on political reform.³⁰

It should be pointed out, notwithstanding all the above-mentioned restrictions on the EU’s scope for promoting democratic standards in Ukraine, that on some occasions Kyiv has in fact delivered some results, notably over the fair and free conduct of the 2006 parliamentary elections which convinced Brussels over opening negotiations on a further agreement with Ukraine – an obvious case of an incentive working. Moreover, the development of media freedom was by and large a success story after the Orange Revolution. In late 2006, the Commission was able to report positive steps towards respect for media freedom (European Commission 2006, p. 5); and in April 2008, the Commission was yet more upbeat:

`The citizens of Ukraine enjoy wide-ranging pluralism in both electronic and print media.

At the same time, a few outstanding issues still need to be addressed. Further progress is needed with regard to the introduction of a public service broadcaster and the development of pluralism in the regional and local media` (European Commission 2008a, p. 5).

The new technology has developed slowly since the Orange Revolution; and by the start of this current decade the political elites had as a whole learned to become rather adept at using this medium.³¹ It should be pointed out, nevertheless, that the media have at times become sucked unhealthily into the intense political rivalry between top political leaders.

Much legislation was passed on the specifics of the political reforms even if not followed by real action. Altogether, the variable performance over different reforms does not absolutely prove the argument about the absence of a “membership perspective”, although Ukraine has defaulted on the key areas of judicial reform and fighting corruption. In the former case, successive Commission reports acknowledged the adoption of measures, usually involving technical and procedural changes, but they fell well short of basic reform leading to real judicial independence. On fighting corruption, there was a similar story with formal change (including

²⁹ T. Beichelt, `Democracy promotion in Eastern Europe in the context of the European Neighbourhood Policy (ENP)’, paper presented to EUSA 10th biennial international conference, Montreal, May 2007, pp. 2, 5, 12, 13.

³⁰ Euractiv internet report, 7 February 2007, www.euractiv.com.

³¹ REFE/RL report, 8 February 2010.

a national anti-corruption strategy) rather than real change which overrode underlying political resistance and confronted the rootedness of the problem. From 2009, there were several signs that the corruption problem was in fact worsening. In July 2010 the Helsinki group pronounced that corruption was on the rise turning Ukraine into a “feudal state” and was especially problematic in local politics.³² Early that year, an opinion survey recorded mounting public dissatisfaction over the country’s direction; and a belief that corruption was spiralling out of control was central to this feeling.³³ It is evident that the incentive to embrace political change for the sake of consolidating liberal democracy has remained weak on essentials, despite the limited upgrading of the relationship with the EU through the Eastern Partnership and a more qualitative advance in Ukraine’s case towards a new association agreement. During the half decade after the Orange Revolution Ukraine had under EU pressure made a few real and also some formal changes favouring democratisation but these hardly amounted to much deepening of democratic values. Accordingly, the country remained vulnerable to a systemic inversion which challenged these.

The EU and the Democracy Question under Yanukovich

Initial EU reactions to Yanukovich’s election as President in February 2010 were guardedly positive since the election was conducted properly according to international standards. Memories recalled that his previous campaign for the same position in autumn 2004 had been hedged with fraudulent practices; but meanwhile free and fair elections had become the new practice in Ukraine. There was official approval in EU circles, as voiced by the EU’s foreign policy representative and even by the European Parliament President. One media source noted philosophically that ‘Yushchenko became that rare breed of leader in the post-Soviet space – a president who leaves office because he loses an election, not because he is forced out or is disqualified from running again because of the constitution’.³⁴ However, the press in some West European countries dwelt on the “defeat” Yanukovich’s victory represented for the Orange Revolution; and reference was made to Yanukovich’s more amenable approach to Russia compared with Yushchenko.

So reactions were really mixed and were prepared to wait on events. There was some hope in the EU that the perennial instability problem that had undermined the effectiveness of the Orange Revolution leaders (and was a repeated complaint in successive Commission reports over the previous years) would now be resolved. That was an argument which supporters of Yanukovich, who had just appointed a compliant prime minister, pushed in Brussels. A year later, the Freedom House report noted this with one major reservation:

‘The president and his defenders credibly argue that this centralisation of power is necessary if the administration is to have any chance to govern Ukraine effectively and pursue long-overdue economic reforms. While the discipline of Yanukovich’s government is a welcome change to some, representing a departure from the paralysing and endless bickering of the Yushchenko-Tymoshenko period, it has also revealed authoritarian tendencies’ . (Freedom House, 2011: ii)

³² RFE/RL report, 28 July 2010.

³³ Survey by Razumkov centre, Kyiv, quoted in RFE/RL report, 28 January 2010.

³⁴ RFE/RL report, 12 March 2010.

By this time, there was evidence of decisions taken to make government more efficient and reduce the chaos of before. These included a radical reduction in the total of government agencies, different economic and social reform initiatives, a flurry of legislative activity and a series of anti-corruption investigations; while progress was registered in negotiations with the EU over the association agreement as well as settling some long-standing bilateral issues with the USA (Freedom House, 2011: 17).

There was another reason for relief in the EU as Yanukovich differed markedly from Yushchenko in not persistently pressing for accession prospects. A perceptible difference of tone and style as well as incentive in Yanukovich's public declarations on European policy had been evident during his tenure as prime minister in 2006-07. He had emphasised the importance of "practical integration", meaning concrete steps and agreements, as distinct from what he sarcastically called the "the illness of Euro-Romanticism" of Yushchenko. His visits to Brussels invariably focussed on economic relations like energy cooperation and securing access to the European market rather than the longer-term question of EU membership, while government sources argued that compliance with EU standards would be based in the absence of the "membership perspective" on a cost-benefits analysis approach (Wolczuk, 2007: 12). Yanukovich's statements on European integration were also noted for their absence of a firm link with democratisation rhetoric that characterised those of Yushchenko. The deeper meaning of this last difference became clearer once Yanukovich became President in 2010 and various retrograde steps were taken with regard to democratic standards.

For, on the political level, the waiting on events did not take long. Measures were taken pointing in an authoritarian direction. These included a strengthening of presidential powers (which admittedly solved the institutional conflict problem), revised electoral rules in favour of the new ruling elite that was seen as 'inconsistent with a country aspiring to EU membership',³⁵ cases brought against opposition leaders who were in the previous government for abuse of power and bribery as well as threats to media freedom and attacks on journalists. As the recent Freedom House report concluded, 'there is no question that President Yanukovich has consolidated power at the expense of democratic development' (Freedom House, 2011: ii). Official reactions in EU circles have differed and have been so far expressed mildly (such as in the statement from the EU-Ukraine summit, November 2010), although a visit by the Polish and Swedish Foreign Ministers in mid-November ended with a warning about maintaining political pluralism.³⁶ Clearly, the EU is biding its time before embracing any new policy line towards Ukraine.

A question that must surely arise in the near future is the question of the association agreement and the democratic standards required under the Eastern Partnership. Kyiv's new record on the EU's political standards now seemed problematic. The Commission report for 2010 reported no progress in fighting corruption while a deteriorating situation as regards human rights, fundamental freedoms and the rule of law was observed (European Commission, 2011: 5-6). As to judicial reform, the lack of substantial change so far meant that Yanukovich faced no serious obstacle as newly elected President to his seeking to strengthen control over the judicial system by giving his office the power over the hiring and firing of judges.³⁷ The most

³⁵ *The Observer*, 22 August 2010.

³⁶ 14th EU-Ukraine Summit joint press statement, 22 November 2010; Euractiv internet report, 17 November 2010, www.euractiv.com.

³⁷ RFE/RL report, 17 August 2010.

visible action taken in this area was to initiate proceedings against former high officials in the previous government, including the former prime minister Tymoshenko (and Yanukovich's main rival in the 2010 presidential election) who was accused of fraudulent dealings while in office. She has achieved much publicity about her case which has become something of an international cause celebre. In early August 2011, the EU finally issued a firm warning about her arrest which was

‘a cause for concern about the state of rule in Ukraine. We reiterate previous statements that we and other colleagues have made on the high standards we expect from a country aspiring to political association with the EU. We urge Ukraine to uphold the principles and common values that form the core of the Eastern Partnership’.³⁸

Nevertheless, the association agreement was due to be finalised at the end of 2011.

Conclusion

The outlook for Ukraine's further democratic development must be considered sobering, all the more given the disappointing record of the Orange Revolution – which, it has to be said, gave Yanukovich his big opportunity for a return to power. The few gains of the five years that followed that revolution concerning the media and elections have now been challenged; and the prospects for the EU in influencing let alone in reversing the worrying developments of the past year and a half appear unpromising. There remains whatever leverage is offered over concluding the association agreement; but so far the EU has played it cautiously about what to do not least as it appears divided here (as it has essentially always been over relations with Ukraine). Some have called for stalling negotiations with Kyiv until democratic regression ceases; but, it has also been reported, ‘EU diplomats insist bringing Ukraine “inside the tent” of economic integration will give greater scope to lean on Yanukovich to improve his human rights record’. Apparently, Tymoshenko is of the same view: ‘Ukraine needs to be saved; if the EU pushes Ukraine away now and leaves it one-on-one with this regime, our country will be thrown back several decades’.³⁹ This was the old strategic quandary for European organisations in dealing with reluctant democracies, except that enlargement policy with its considerably greater leverage had taken a firm line about meeting political conditions before negotiations ended.

It is significant that remedies offered for reviving Ukraine's democratic prospects have been longer-term, avoiding the EU's present dilemma. They include the greater involvement of civil society and the outside encouragement of NGOs (which is highlighted by the Eastern Partnership) as well as placing hope in the socialisation effects of the greater engagement of Ukrainian authorities in the business of European integration. These are indeed important developments that could eventually promote democratic consideration. But, meanwhile, the EU is faced with a questionable political development in Ukraine where early decisions are required. Meanwhile, further indicators about the course of events are expected including the conduct of the parliamentary elections scheduled for November 2012 (Freedom House, 2011: 7-8). Whether electoral disapproval for Yanukovich might appear then is presently a vain hope; and meanwhile some mistrust has entered EU/Ukraine relations.

³⁸ Joint statement by EU High Representative Catherine Ashton and Commissioner Štefan Füle on the arrest of Yulia Tymoshenko in Ukraine, Brussels, 5 August 2011.

³⁹ *The Guardian*, 24 June 2011.

REFERENCES

- Boonstra, J. and Shapovalova, N. (2010) *The EU's Eastern Partnership: One Year Backwards*, Working Paper 99 (Madrid, FRIDE, Madrid), May
- European Commission (2004) *European Neighbourhood Policy: Strategy Paper*, COM(2004) 373 final, Brussels, 12 May
- European Commission (2006) *ENP Progress Report: Ukraine*, SEC(2006) 1505/2 (Brussels), 4 December
- European Commission (2008) *Eastern Partnership*, COM/2008/0823 final, Brussels, 3 December
- European Commission (2008a), *Implementation of the ENP in 2007: Progress Report Ukraine*, SEC(2008) 402, Brussels, 3 April
- European Commission (2011), *Implementation of the European Neighbourhood Policy in 2010: Country Report on Ukraine*, Brussels, 25 May
- Freedom House (2011), *Sounding the Alarm: Protecting Democracy in Ukraine*, Washington, April
- Gawrich, A., Melnykovska, I. and Schweickert, R. (2010) 'Neighbourhood Europeanization through ENP: the case of Ukraine', *Journal of Common Market Studies*, vol. 48, 5, November
- International Centre for Policy Studies (ICPS) (2009), Kyiv, *Inside Ukraine*, no. 3, December
- ICPS (2010), *A New Foreign Policy for Ukraine: Expert Perspectives* (Kiev, International Centre for Policy Studies)
- ICPS (2010a) *EU Standards of Democratic Governing – The Only Way to Desovietize Public Administration in Ukraine*, (Kiev, International Centre for Policy Studies), European Focus no. 4
- ICPS (2010b) *The EU-Ukraine Association Agreement: From Imitation to Results* (Kiev, International Centre for Policy Studies) Policy Brief, April
- ICPS (2010c) *Six Ukrainian Myths* (Kiev, International Centre for Policy Studies), European Focus no. 11
- Kelley, J. (2006) 'New wine in old wineskins: promoting political reforms through the new European Neighbourhood Policy', *Journal of Common Market Studies*, vol. 44, 1
- Nemyria, H. (2005) 'The Orange Revolution: explaining the unexpected' in Emerson, M. (ed.), *Democratisation in the European Neighbourhood* (Brussels, Centre for European Policy Studies)
- Pridham, G. (2005) *Designing Democracy: EU Enlargement and Regime Change in Post-Communist Europe* (Basingstoke, Palgrave Macmillan)
- Shapovalova, N. (2010) 'Ukraine: a new partnership' in Youngs, R. (ed.), *The European Union and Democracy Promotion: a Critical Global Assessment* (Baltimore, The Johns Hopkins University Press)
- Solonenko, I. (2009) 'External democracy promotion in Ukraine: the role of the European Union', *Democratization*, vol. 16, 4, August
- Stefan Batory Foundation (2005) *Will the Orange Revolution bear fruit?: EU-Ukraine Relations in 2005 and the Beginning of 2006* (Warsaw), May 2005
- Wilson, A. (2005) *Ukraine's Orange Revolution* (New Haven, Yale University Press)
- Wolczuk, K. (2007) *Adjectival Europeanization?: The Impact of EU Conditionality on Ukraine under the European Neighbourhood Policy*, European Research Working Paper no. 18 (University of Birmingham)