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The European Union to Ukraine's Rescue

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Recent events have provided the opportunity for the rekindling of relations between Ukraine and the European Union¹. The EU quickly recognized Kiev's interim government, providing support in various forms, including an €11 billion financial aid plan over the coming years. The assistance is to alleviate short-term needs, but its long-term disbursement will depend on the Ukrainian government's ability to bring about comprehensive reforms.

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The crisis in Ukraine will likely change the country's relations with the EU in the years to come. The Maidan protests that broke out in November 2013 were in part triggered by the decision of the former government not to sign an association agreement with the EU that had been negotiated for years. The following conflict between the government and the opposition led to the ousting of President Victor Yanukovich in February 2014 and the signing of an association agreement with the EU under the interim government in March 2014. Under the newly elected President Petro Poroshenko, Ukraine is likely to pursue a "Western-oriented" foreign policy that will seek close relations with the EU. How will EU-Ukraine relations develop in the next years? How can the EU support Ukraine's territorial integrity, stability, economic development and rule of law? This article examines EU-Ukraine's relations in the past and present, and illustrates reform fields that are likely to be supported by the EU and its member states in the future.

EU-Ukraine relations prior to the Maidan protests

EU-Ukraine relations before the Maidan protests have been characterized by time-consuming negotiations over an association agreement

1. This article was finalized in June 2014.

and disappointment by the Ukrainian governments over the absence of a “European perspective” for Ukraine.

The EU had started contractual relations with Ukraine in 1994, when both parties signed a Partnership and Cooperation Agreement that entered into force in 1998. Following the Orange Revolution in 2004, President Viktor Yushchenko tried to forge closer ties with the EU and promoted the long-term goal of EU membership. The EU remained, however, rather reluctant to provide such a “European perspective” for Ukraine, although the possibility was supported by the European Parliament and not ruled out by the European Commission. Also some member states, particularly neighbouring Poland, have promoted Ukraine’s membership prospect for years, but there was no consensus on the issue among the member states. In 2005, the European Council adopted a “Joint EU-Ukraine Action Plan” that was to serve as a framework for joint work on key reform areas in Ukraine, and in 2007, the EU and Ukraine started negotiations on an association agreement as a framework for closer cooperation and regular political dialogue. In addition, negotiations on a free trade agreement were started in February 2008.

Despite the already ongoing negotiations with the EU, Ukraine in 2009 also became partner country in the EU’s Eastern Partnership (besides Armenia, Azerbaijan, Belarus, Georgia and Moldova). Following the Russia-Georgia War in 2008 and the gas conflict between Ukraine and Russia in early 2009, the EaP was launched in May 2009 to accelerate political association and economic integration between the EU and the partner countries. An intermediate step of the process is the signature of Association Agreements with the EU, which specify future reform priorities, and include a “Deep and Comprehensive Free Trade Area” (DCFTA). The DCFTA is to promote trade by gradually eliminating tariffs and trade quotas between the EU and the partner countries. The main incentives for partner countries to participate in the EaP are gradual visa liberalization and the benefits of free trade within the EU’s Single Market. Given that bilateral negotiations between Ukraine and EU were already ongoing, the EaP did not really represent an added-value for Ukraine in its relations with the EU. Ukrainian officials were especially disappointed about the absence of a reference to an EU membership prospect in the EaP framework.

In June 2009, the EU and Ukraine adopted an “EU-Ukraine Association Agenda”, with the association agreement scheduled to be signed at the December 2011 EU-Ukraine Summit. However, due to concerns over

the jailing of former Prime Minister Yulia Tymoshenko, whose trial was considered by the EU as show trial, the EU postponed the signature. The government under former President Yanukovich, in office since 2010, officially claimed the goal of EU integration as a foreign policy priority, but its efforts to address reforms that were requested by the EU remained limited. As a result, also the negotiations on visa-free travel for Ukrainian citizens stagnated.² Although the association agreement was initialled in March 2012, the European Council in December 2012 reaffirmed its objection to sign the agreement until Ukraine had taken action in three areas: to address the problem of “selective justice” and to prevent its recurrence (a reference to the imprisonment of Tymoshenko); to overcome shortcomings in the electoral system; and to take steps on judicial reform.³

In early 2013, while stating that Ukraine would increase its efforts to address the issues raised by the EU, President Yanukovich reached out to the Russian government to discuss Ukraine's potential membership in the Customs Union.⁴ At this point, EU officials warned that Ukraine could not be part of the DCFTA if it became a member of the Customs Union. In summer 2013, the Russian government increased its pressure on the Ukrainian government to prevent it from forming a closer relationship with the EU. To show the importance of close economic and social relations with Russia, the Kremlin imposed import restrictions on Ukrainian products (for example freight trains and chocolate) and threatened a new visa regime for Ukrainian citizens who travel to Russia. Nevertheless, President Yanukovich in September 2013 demanded the Ukrainian parliament to adopt laws that would allow Ukraine to sign the association agreement with the EU. On the other hand, he paid a visit to Moscow in early November 2013, which led observers to speculate that Putin had offered cheap loans for the Ukrainian economy in exchange for Ukraine's rejection of the association agreement.

2. In order to achieve visa liberalisation, the Ukrainian government was requested to sufficiently address shortcomings with regards to border controls, migration and asylum policies.

3. According to the EU, the trials against Tymoshenko and other politicians of the former government “did not respect international standards as regards fair, transparent and independent legal processes” (see Council of the EU, « 3209th Council Meeting Foreign Affairs », press release, document 17438/12, 10 December 2012, p. 13-14). The EU's interference in the case of Yulia Tymoshenko has been, however, a controversial subject among the member states: Germany, the UK, the Benelux and the Nordic countries regarded the case as a perfect example of “selective justice” in Ukraine. Other member states have maintained that not all of Ukraine should be penalized over the Tymoshenko case. In particular, Poland and the Baltic states, for which Ukraine's association with the EU is of high strategic importance, argued that Ukraine's reforms had been sufficient for it to sign the AA – irrespective of Tymoshenko's release.

4. Promoted by Russian President Vladimir Putin, the Customs Union between Belarus, Kazakhstan and Russia installed common external customs, is to further eliminate tariffs and non-tariff barriers to trade between its members, and will be succeeded by the Eurasian Union in January 2015. The Russian government sees Ukraine's participation in the Customs Union and the Eurasian Union as an important element for the integration project to succeed.

On 21 November 2013, the Ukrainian parliament decided not to sign the association agreement with the EU. Arguing that it could not make a rigid choice in favour of either the EU or Russia, the Ukrainian government proposed a trilateral dialogue between Ukraine, Russia and the EU, with the objective of achieving free trade with the EU and the Customs Union. The decision not to sign the association agreement was among the factors that triggered the Maidan protests.

In December 2013, Vladimir Putin declared that the Russian government would invest about \$15 billion in Ukrainian government bonds and that Gazprom would reduce the price for Russian gas from \$430 to \$268 per 1,000 cubic meters.⁵ Ukraine's dependence on gas supplies from Russia was an important factor in the government's decision not to sign the association agreement. Even though the EU has offered financial support amounting to €600 to €700 million to assist the transitional period, President Yanukovich has maintained that these offers do not adequately cover the losses from likely Russian trade sanctions.

The EU's efforts to mediate between President Yanukovich and the opposition parties on 21 February 2014 resulted in an "Agreement on the Settlement of Crisis", which was brokered by the foreign ministers of France (Laurent Fabius), Germany (Frank-Walter Steinmeier), and Poland (Radosław Sikorski). Among others, it stipulated the refrain from the use of violence, the restoration of the Constitution of 2004, the formation of a national unity government, the launch of a constitutional reform process, and presidential elections until December 2014. The February agreement, however, was never implemented as President Yanukovich left the country and was immediately removed from his post by the parliament. Although Yanukovich's ouster was not in compliance with the constitution⁶, the EU soon recognized the new government and the interim president.

The EU's support for Ukraine's new government

In the wake of the crisis and the ousting of the former government, the EU has strengthened its support for Ukraine. The EU's response to the Russian intervention in Crimea and the insurgency in eastern Ukraine included numerous political declarations and various measures. EU declarations included the condemnation of Crimea's illegal annexation, the commitment to Ukraine's sovereignty and territorial integrity, the support for the

5. Russia's support for Ukraine was cancelled after the ousting of President Yanukovich in February 2014.

6. See e.g. Radio Free Europe, "Was Yanukovich's Ouster Constitutional?", 23 February 2014.

presidential elections in May 2014, and the commitment to support the new government's efforts to undertake political and economic reforms.

With regards to more concrete measures, the EU imposed sanctions on 18 persons from Ukraine that have been identified as being "responsible for the misappropriation of Ukrainian state funds".⁷ It has targeted a number of Russian officials with assets freezes and travel bans.

While EU-Russia relations have significantly deteriorated in the past months, the EU's relations with Kyiv were further strengthened with an association agreement that was signed in March 2014. The EU decided to cut customs on nearly all Ukrainian imports to the EU (exemptions include the automotive sector) before the DCFTA enters into force, while allowing Ukraine to maintain current customs on EU imports.⁸ It remains controversial how much Ukraine can profit from the DCFTA once it enters into force: Some industries, including the automobile industries and sectors of the agriculture industries, have in the past opposed the DCFTA in an effort to protect domestic producers and to stop unrestricted EU exports from overflowing Ukrainian markets.⁹ The unknown factors of joining the DCFTA are the compliance costs that Ukraine would have to bear in the short and medium term. These costs are related to reforms and modernisation that Ukraine would have to implement in order to comply with EU regulations, for example sanitary standards. A general assessment of the compliance costs is difficult as they are apparently sector-and industry-specific.¹⁰

Third, the EU in early March 2014 unveiled an aid package for Ukraine that could bring overall support of at least €11 billion over the coming years. It includes a €1.6 billion loan in macro financial assistance, a €1.4 billion aid package to assist Ukraine's reform efforts between 2014 and 2020, up to €3 billion in loans from the European Investment Bank, and up to €5 billion in loans from the European Bank for Reconstruction and Development.¹¹ In addition, the EU will establish a donor coordination platform and High Level Investment Forum/Task Force and grant

7. Similar sanctions were imposed on Russian officials that are held responsible for undermining Ukraine's sovereignty and territorial integrity.

8. The trade part was partly postponed due to concerns over the introduction of additional Russian customs on Ukrainian products and their economic consequences for Ukraine.

9. O. Shumylo-Tapiola, "Ukraine at the Crossroads: Between the EU DCFTA & Customs Union", *Ifri, Russie.Nei.Reports*, n° 11, April 2012, p. 11.

10. Some experts argue that while large Ukrainian producers and exporters might not be negatively affected by the DCFTA, small and medium enterprises might encounter tough competition from EU exports. See O. Shumylo-Tapiola, *op. cit.*, p. 8-14.

11. The EU's aid package was conditional on the signature of an agreement between the Ukrainian government and the International Monetary Fund (IMF) over a \$17 billion IMF loan, which was approved in April 2014. The EU's member states gave political support for the agreement with the IMF.

technical assistance on a number of areas from constitutional to judicial reform and preparation of elections.¹²

In addition, the EU tried to contribute to conflict resolution in Ukraine. In April 2014, representatives of the new Ukrainian government, the EU, the U.S., and Russia agreed in Geneva on steps to de-escalate the conflict in Ukraine. But due to the violent conflict in eastern Ukraine that followed its signing, the “Geneva agreement” was never implemented. Since this failed initiative, there have been intensive efforts by different European heads of government and foreign ministers to bring the Russian government and particularly President Putin to do more to defuse the insurgency in eastern Ukraine, which, however, also failed. Thus, the EU’s efforts in crisis management have not been very effective

Fifth, the EU has supported negotiations between the Ukrainian government and the Russia state-owned energy company Gazprom in order to reach a deal to end their dispute over natural-gas prices. Apparently, the EU supports these efforts also out of self-interest: As Ukraine is an important transit country for Russian gas to Europe, the EU has an intrinsic interest to avert a possible disruption of these energy supplies. In order to prevent future disputes between Ukraine and Russia over gas, the EU has also permitted the Ukrainian government to use some of the EU loans to pay back outstanding debts to Gazprom. At the same time, the EU has announced its support to modernize Ukraine’s natural gas transit system and to work on reversing the flow of pipelines through Slovakia. This should allow Ukraine to receive gas from Western Europe and reduce its dependence on Russia.

Ukraine after the presidential elections

EU-Ukraine relations are likely to further intensify under the new President Petro Poroshenko, elected in May 2014. Poroshenko will have to deal with a variety of challenges, including a solution to the insurgency in eastern Ukraine, a compromise with Russia on gas supplies, and various political and economic reforms. The EU has committed to support these reforms, but it will also apply pressure if it does not see progress in this respect.

To secure Ukraine’s unity, the most urgent issue in Ukraine is an effective conflict resolution process. The government’s response to the separatist

12. European Commission, “European Commission’s Support to Ukraine”, document MEMO/14/159, 5 March 2014.

occupations in the eastern Ukraine was military force. While military force by a government against its own population is highly controversial, these measures have not been openly criticized by representatives of the EU or its member states. The EU has, however, indicated that it wants the government to start a genuine national dialogue. A dialogue has been started in May 2014, but – as of June 2014 – it has not yet led to tangible result with regards to conflict resolution. The separatists apparently do not have the support of large parts of the population in eastern Ukraine, which in its majority wants to remain part of Ukraine, although with greater autonomy from the central government.¹³ President Poroshenko has indicated his support for a dialogue with “peaceful citizens” in the east, but it remains unclear which representatives of eastern Ukraine will participate. The government therefore ultimately has to come up with an approach that helps to gain trust among the citizens in the eastern regions. An effective measure on this way could be an ambitious and comprehensive reform agenda. Reforms would be supported by international organisations, including the EU, that have in the past years regularly referred to major shortcomings in the political and economic system of Ukraine.

An area which is likely to have an immediate impact on easing tensions between the eastern regions and the central government is the reform of the administrative structure of the country. According to its constitution, Ukraine is a unitary state in which public policies are mostly implemented in a top-down approach. The regional and district levels consist of councils with legislative powers and state administrators with executive powers, including the competence to decide on key financial issues. While members of the councils are elected by popular vote, the state administrators are appointed by the president, to whom they report directly. In the past, the state administrators have been frequently more responsive to the central government than to the local population. This is among the reasons why, according to the Organization for Economic Co-operation and Development (OECD), service provision by the central government often falls short of local needs.¹⁴

In addition to the lack of political autonomy, the regional levels depend on the central administration for financial resources. Revenues from local taxes and fees are low, and local budgets most often rely on state subsidies, whose allocation is often not transparent. Due to these

13. See Pew Research, “Despite Concerns about Governance, Ukrainians Want to Remain One Country”, 2014.

14. Organisation for Economic Cooperation and Development, “Territorial Reviews: Ukraine”, Paris, OECD Publishing, 2014.

administrative structures, the EU, which considers Ukraine to be one of the most centralized countries in Europe, has advocated decentralization for years.¹⁵ While the interim government opposes federalization, fearing that it will lead to the separation of some regions from Ukraine, it supports decentralization. Through decentralization, greater powers on taxation, spending and the election of governors could be assigned to the regions and districts. A comprehensive reform could have a positive impact on the relations between the central government and the regions, particularly the regions in eastern and southern Ukraine. Once a reform will be adopted by the new government, the EU will likely support it through technical assistance.

As part of the EU practical assistance for reforms in the country and its transition process, the EU Commission and the Ukrainian government in May 2014 signed a “State Building Contract” program (worth €355 million). The program should help address short-term economic stabilization and implement governance reforms in order to promote good governance, more accountability and inclusive socio-economic development. It includes concrete steps towards building transparency and fighting against corruption, and should help to increase the government’s ability to respond to citizens’ demands and needs. Disbursement of the EU funds will be conditional on the progress of reforms with regards to anti-corruption (including provisions against illicit enrichment and provisions for transparency and competitiveness of public procurement), public administration (for example the establishment of a merit-based, non-political recruitment and promotion of civil servants), constitutional reform, electoral legislation and judiciary reform.¹⁶

As the EU expects that judiciary reform will lead to better results in the fight against corruption, judiciary reform is high on the reform agenda. Although Ukraine’s Constitution grants judicial independence, there is little separation of judicial and political powers in practice. While this was already a problem before Viktor Yanukovich became president, the trend was reinforced by legislation in 2010, which gave the presidential administration extensive influence over judicial appointments, provisions for disciplining judges and judicial self-governance. The president controlled the

15. European Commission, “Implementation of the European Neighbourhood Policy in Ukraine Progress in 2013 and Recommendations for Action”, document no. SWD(2014) 96 final, 27 March 2014, p. 10. Decentralization is the redistribution of functions and decision-making powers to the local level in some policy areas and is based on the assumption that local government can better satisfy certain needs of the population than a centralized administration.

16. European Commission, “European Commission’s Support for Ukraine: Update”, document MEMO/14/279, 13 May 2014.

appointments of the members of the High Council of Justice and the High Qualification Commission of Judges who are responsible for the assignment, transfer and dismissal of judges, including court presidents. Since the court presidents have authority over the personnel, administrative and financial aspects of the judiciary, they determine the careers of judges. Such a high degree of presidential control weakened the independence of the courts, leading to self-censorship among judges and politically-motivated judicial processes.

The interim government's reaction to these weaknesses was the replacement of the most prominent officeholders in Ukraine's judiciary and the establishment of a lustration commission, which is to purge officials who have abused power or violated human rights during the Yanukovych years. The Council of Europe and Human Rights Watch have already warned that the lustration procedures that have been decided in April 2014 may set the stage for arbitrary and unlawful purging. These activities also cast doubt on the new government's will to end political interference in Ukraine's judicial system. The EU will follow legislation in the rule of law area and will provide technical assistance in this field, but it will also expect a comprehensive review of judicial practices in Ukraine.

As a result of the crisis in Ukraine, EU-Ukraine relations have been significantly strengthened since February 2014. This is likely to continue, particularly since President Poroshenko and the new government that will be formed subsequent to the parliamentary elections are likely to pursue a Western-oriented foreign policy. There was initially the expectation that the election of Poroshenko would have a positive effect on the Russian policy towards Ukraine. As an influential oligarch and member of previous governments, President Poroshenko is well known in the Kremlin. But Moscow's imperialistic policy vis-a-vis Ukraine has certainly poisoned Russia-Ukraine relations for the coming years. The Ukrainian government will therefore much more than in the past seek close relations with the West.

With intensified relations between Ukraine and the EU, the expectations to offer a more concrete "European prospect" will rise on the EU. The European Parliament in February 2014 passed a resolution that recognized Ukraine's right to apply for EU membership, provided that it fulfils all necessary criteria. But this view was until recently highly

controversial among the member states: Poland, the Baltic States and Sweden have promoted Ukraine's gradual integration into the EU as an effective way to stimulate reforms. This perspective was traditionally opposed by France and other EU members that are rather in favour of the EU's consolidation instead of its expansion. Trends in this respect might have changed significantly in the past months, and the discussion on Ukraine's potential EU membership will certainly shape EU-Ukraine relations in the years to come.

