

ECFR background note on Ukraine before FAC on 21st October

17th October 2013

Ukraine is a constant source of frustration for its partners, but is also a key test of the EU's powers of attraction and foreign policy credibility. If the EU cannot exercise influence in its closest neighbourhood, then it will struggle in the Middle East, North Africa and further afield. Trumpeting the success of smaller Eastern Partnership countries like Moldova is no substitute for establishing a more productive relationship with the most important country, which is Ukraine, both at and after the forthcoming Eastern Partnership summit in Vilnius. There are three measures of success:

- Solving the Tymoshenko question
- Signing the key agreements (Association Agreement and Deep and Comprehensive Free Trade Agreement, the DCFTA)
- Keeping Ukraine on the hook

On Tymoshenko, there must be contingency planning for a Yanukovich veto. As in 2011, the year of Tymoshenko's arrest, Yanukovich is giving out deliberately misleading signals to all sides, while seeking to draw the process out – up to or even beyond the FAC on 18 November, hoping the EU will in the end not insist on her release as a precondition for signing the agreements. A pardon looks less likely than a legal process to allow foreign medical treatment for prisoners. If the EU is offered only the *beginning* of such a process, it must stand firm. It must not accept the argument that the Tymoshenko case is 'more difficult' than that of other selective prosecutions. This time it is clear that the buck stops on Yanukovich's desk; leading oligarchs around him now expect a deal.

Although the Tymoshenko case dominates discussion before the Vilnius summit, the real accomplishment would be for Ukraine to implement the reforms it has signed up for. There have always been disadvantages to over-emphasising the Tymoshenko question. It has suited the Ukrainian authorities for attention to be diverted from the demand for structural changes to the legal system, which is a much more important shield for their interests.

Without structural reform, there is a real risk of the EU *losing* leverage after the summit. The third condition, maintaining the pressure for reform, is therefore the most difficult, but the most important. By definition, as time is now so short, Ukraine will not fulfil all the key conditions before the Vilnius summit. In order to maintain pressure therefore:

- The European Parliament's ratification process should focus on whether Ukraine has enacted the key legal-structural reforms (on judicial independence and the reform of the Procuracy). If provisional application of all or part of the Agreements is to be considered, it should be on the same basis.
- Full passage of the package of new domestic laws begun in September must be an absolute condition. As the government and opposition have been cooperating to vote bills through at first reading, there can be no excuse for not doing this.

- The Ukrainian authorities need to feel the inter-connectedness of Europe. The Ukrainian economy is in desperate trouble: Yanukovich may feel that a deal over Tymoshenko will unlock a wave of free money. It won't, but it needs to be made clear that signing the agreements in Vilnius is a necessary step towards establishing Ukraine's bona fides with the IMF (whose conditions Ukraine is currently even further away from meeting), EBRD et al. Financial crisis is a real possibility in the New Year. Russia may step in, but every penny will count.

The EU cannot afford to 'go soft' on Ukraine for geopolitical reasons, namely increased Russian pressure. It cannot offer more within the Eastern Partnership (EaP) if conditionality is not met. But the EU can signal other measures to support Ukraine's sovereignty and its sovereign right to determine its own foreign and trade policy.

Energy is the most likely point of Russian pressure: the Energy Community should be strengthened to offer Ukraine some of the collective legal protection of a mini-EU, by giving the Vienna Secretariat more power to act as a quasi-Commission and by setting up an 'Energy Community Court'. The EU should support Ukraine's energy diversification strategies wherever its role can be direct. For example, the EU Commission should put more pressure on Slovakia to facilitate reverse gas flow to Ukraine.

If the summit is successful, the EU must show that it is serious about helping Ukraine resist Russian pressure. Russia's campaign since August has been counter-productive, precisely because it was only a foretaste of possible future measures. A more sustained campaign may produce different reactions. The EU cannot match Russia with like-for-like, it will never be as quick and nimble as Russia; it cannot offer the 'side payments' that Russia can – but it must draw up contingency plans to show that solidarity matters. The EU has a custodial obligation to show *all* of its neighbours that closer relations with the EU will not damage their national interests. An acceleration of visa liberalisation measures would carry most weight on the ground. As with Moldovan wine, DG Trade should be ready to reconsider quotas for any Ukrainian products subject to Russian export restrictions

If the summit is successful, the EU should give Ukraine more, through add-on measures both within and beyond the EaP, combining the short-term measures listed above with the announcement of longer-term support. More attention should be given to civil society groups, as they will be crucial in pushing for effective implementation of the DCFTA, and for explaining its costs and benefits if Russian pressure mounts.

- The EU should expand and popularise its information campaign after Vilnius, as Russian-influenced propaganda in favour of the Customs Union is currently winning the day.
- An 'EaP University', modelled on the Central European University in Budapest, would have several advantages: it would offer educational opportunities without brain-drain, it would encourage local competition effects, help train a more pro-EU elite, and act as a centre to counteract anti-EU propaganda. If the university were centred in Kiev, the prestige would make it hard for the Ukrainian authorities to refuse.
- Kiev should also be made the centre of 'e-EaP' – online fora for the exchange of best practice between EaP states and NGOs.