

Ukraine's Association Agreement with the EU: Acceptable Compromises and Shared Hypocrisies

Written by David R. Marples

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DAVID R. MARPLES, JUL 16 2017

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Ukraine entered a Partnership and Cooperation Agreement (PCA) with the EU in 1998. In May 2009, it then joined the Eastern Partnership Project – an initiative of Poland and Sweden that also encompassed six of the EU border states: Armenia, Azerbaijan, Georgia, Belarus, Moldova, and Ukraine. Ironically, aside from Moldova, all of them were founding states of the Soviet Union in December 1922, though at that time the three Caucasian states formed a single bloc. In December 2011, at the 15th EU-Ukraine summit, the two sides entered final negotiations to establish a political association and economic agreement to replace the original PCA, namely the Association Agreement. On 30 March 2012, the partners initialled the AA, which included a Deep and Comprehensive Free Trade Agreement (DCFT). The EU requested a number of reforms in Ukraine to be in place before the final signing. They included improvements to the legal and juridical systems, prison confinement, changes to the election laws, and positive steps toward the release of former Prime Minister Yulia Tymoshenko, whose arrest the EU perceives as politically motivated and based on 'selective justice'. The release of the former Minister of Interior Yuriy Lutsenko, on 7 April 2013, appeared to be a major step in the right direction, but his case was less problematic for the Ukrainian leadership. Still, the stage seems set for three of the states in the Eastern Partnership – Ukraine, Moldova, and Georgia – to sign Association and DCFT agreements with the EU at the Vilnius Summit on 28-29 November.

Political Situation in Ukraine

Ukraine's political situation was only made more complicated by the parliamentary elections of 2012, in which the ruling Regions Party attained a plurality, but overall a clear minority of votes, and five parties attained the minimum percentage required to enter the parliament: Batkivshchyna (Fatherland), UDAR (literally The Blow; the acronym stands for the Ukrainian Democratic Alliance for Reform), the Communist Party of Ukraine, and Svoboda (Freedom). Western observers pointed out several flaws in the election and considered it 'not completely free'. The Ukrainian Cabinet today is under the firm control of ministers from Donetsk region, which is also the home base of the country's president, and Regions Party member, Viktor Yanukovich. In July 2012, at the latter's behest, parliament accepted a controversial language law, guaranteeing regional status of languages where 10% of more of the population speaks them. Specifically, the law empowered Russian speakers in the southern and eastern regions of Ukraine, where they predominate. Though the president had long threatened to introduce such a law, he was not necessarily expected to do so because of the polarising impact it was likely to have.

Notably over recent weeks, Yanukovich has also quelled dissidence in his own party ranks on the issue of signing the Association Agreement, though earlier in the summer of 2013 opinion polls highlighted substantial opposition to it within the parliamentary party. The Communists unsurprisingly are even more adamantly opposed. On 17 September, however, the Ukrainian Central Election Commission refused permission to the Communists and the

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Ukraine Choice movement, which is led by pro-Putin oligarch Viktor Medvedchuk, permission to hold a meeting concerning a referendum on whether Ukraine should sign the Agreement. Yanukovich has thus eliminated protests and exploited support from Ukraine's oligarchs for closer cooperation with the EU. In so doing, he has taken away from the opposition its key policy, which will leave the three parties more vulnerable in the next elections unless they turn to an alternative platform.

Such a move leaves Yanukovich in a good position to contest the presidential election of 2015, though the move westward will leave space for a pro-Russia candidate to fill. In that case, the president may form a temporary alliance with the opposition – a situation similar to that in 1999 when Leonid Kuchma ran against the Communist leader Petro Symonenko, and received most of his votes in regions that traditionally opposed him.

One problem for the president currently is that he is losing support in the main party strongholds of the east and south because of economic difficulties and a failure to fulfil election promises. In turn his predicament may benefit the Communists or even the UDAR, a party that has some support in these regions. Thus, the goal for the Regions is to ensure that the signing of the Agreement pays quick dividends before the presidential elections.

Opinion polls suggest that support in Ukraine for closer ties with the EU has finally surpassed that for the Russian-led Customs Union. Minister of the Economy Petro Poroshenko has declared that the gap is over 50% compared to 30%. Other polls suggest the gap is smaller: joint Ukrainian-Russian public opinion polls have 36% supporting the EU and 38% the Customs Union with Russia, Belarus, and Kazakhstan. The regional divide is itself deeply worrisome, though it is evident in each member state of the Eastern Partnership.

Relations with Russia

Ukraine's relations with Russia are difficult and strained. In Moscow, there are three people who deal with Ukraine. The first is Vladimir Putin himself, who has made Ukraine his key target in relations with what used to be termed the 'Near Abroad'. In this respect, particularly revealing was the Russian president's visit to Ukraine on 27-28 July, in conjunction with the 1025th anniversary of Kyivan Rus', when Russian Patriarch Kirill I accompanied him in attending celebrations at the Pecherska Lavra. Also in Kyiv, President Putin attended a round-table conference entitled 'Orthodox-Slavic Values: the Foundation of Civilised Choice of Ukraine', organised by the Ukrainian Choice Movement of Medvedchuk, who was formerly head of the presidential administration of Leonid Kuchma. A powerful oligarch (though only the 57th richest!), Medvedchuk supports Ukraine joining the Common Economic Space customs union and is an active opponent of the Association Agreement with the EU.

The second figure is economist Sergey Glazyev, the advisor of the Russian president for Customs Union issues and relations with Ukraine, who has been particularly outspoken and aggressive, declaring that if the AA is signed, Russia will exclude Ukraine from the Free Trade area of the CIS. He also stated that the Eurasian Commission would impose a single customs tariff on Ukrainian products, particularly as goods from the EU that are no longer subject to import duties, would likely flood the Ukrainian market. In this way, Glazyev continued, Ukraine will be pushed toward default; hence signing the agreement will be tantamount to 'euthanasia'. He was believed to be responsible for the ban on Ukrainian products that started with the Roshen chocolate company in the summer of 2013, which extended to Moldovan wines last month. Though outspoken, many analysts regard Glazyev as a peripheral statesman.

The third figure is a familiar one to Russia watchers, namely Vladislav Surkov, a 49-year old English-speaking businessman and ideologue with enormous influence over the Russian government and Putin in particular. His impact has been compared with that of Mikhail Suslov, the so-called 'grey cardinal' for many years in the Soviet leadership from Stalin to Brezhnev. On 20 September, Surkov received the appointment of presidential aide. In a recent paper, analyst Roman Rukomeda speculated that his installation was specifically for future relations with Ukraine. The position returns him to his former prominence following his earlier spell as Deputy Chief of Staff to Putin in 2004. Surkov is the architect of the prevailing economic system in Russia that has been termed 'sovereign democracy' and he is close to extremist factions such as *Nashi*. Many regard him as the Kremlin's chief ideologue.

The current prominence of these strongly nationalist leaders suggests that Russia will put considerable pressure on

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Ukraine both before the Vilnius Summit – though the Russian side expects the agreement to be signed – and especially afterward. Most important will be the 2015 presidential election campaign, though Russia's past attempts to influence Ukrainian elections have been spectacularly unsuccessful.

Economic Situation in Ukraine

Ukraine's economic situation is very difficult. One can begin with the catastrophic decline in population since independence from 52.5 to the present 44.5 million, a drop of over 15% in 22 years. Its GDP fell by 1.3% in the second quarter of 2013, though over the entire year a modest growth of 0.5% is anticipated. The Russian scenario that Ukraine will face a serious crisis after signing the Association Agreement is not exaggerated. In the short term, Ukraine faces continued depletion of its hard currency reserves, which fell by 30% over the past year, and now has barely enough to cover 2-3 months of imports. The inflow of European goods expected after the agreement may reduce current export of Ukrainian products to Russia.

The issue is whether the largely unreformed Ukrainian economy can compete. That is not to say that there have been no attempts at reform. One year ago, Poroshenko announced that 1,200 factories would be removed from the list of strategic assets that could not be privatised. The list was assumed to include coalmines, oil and gas pipelines, and grain silos among other assets. On 11 September 2013, the Ukrainian State Property Fund announced that 45 coalmines belonging to various state-owned enterprises would be privatised in an effort to raise coal production through modernisation of mines using private capital.

This sector is perhaps the best example of Ukraine's current economic dilemmas: the state mining sector ran up losses of over \$1 billion in the first seven months of 2013: 70% of the mines are state-owned and 80% of them rely on subsidies to stay afloat. Thus, the question needs to be asked: why would private businesses risk investing in an industry with falling productivity and for which demand is weak? The law of 2012 also stipulates that any privatisation must come with guarantees of the social security of the coalminers through creation of trade unions and other safeguards.

Despite the passage of the law, there has been little movement on privatisation in Ukraine; rather, companies have been auctioned off to the main financial backers of the Regions Party – oligarchs Rinat Akhmetov and Dmytro Firtash. These business leaders, intent on building personal empires – Akhmetov's net worth is estimated at 15.4 billion – have continued to exploit Ukraine's assets following a similar pattern to that in Russia in the 1990s.

The recent lowering of Ukraine's credit rating by Moody's to Caa1 and the current need for foreign loans may put pressure on currency. All these factors, added to the very real threat of Russian economic responses to Ukraine signing the AA, suggest that over next five years Ukraine will undergo deep economic recession – we have already seen the lowering of GDP forecasts for next year. Some of the demands of the Europeans will have immediate and distressing effects – two analysts pointed out earlier this week that the requirements needed for large combustible plants would cost about half of Ukraine's current annual budget to implement. But with reforms, over the long term the country can recover and will do better outside the Russian orbit, which is based largely on non-renewable resources and demands for closer integration.

Moreover, the EU is prepared to make some compromises. It may permit the benefits of free trade to begin at once rather than waiting for ratification of the AA by all 28 member-states. In other words, the EU link may be the best way to introduce a form of shock therapy in Ukraine that can reduce past dependence on Russian goods and, even more important, bring in economic reforms that have been almost fatally delayed in the entire period of independence. Finally, trade with the EU will eventually be more useful and profitable for Ukraine, than trade with the oil and gas dependent Russia.

The EU Perspective

Concerning the EU's attitude to signing the Association Agreement with Ukraine, one can start with recent quote from president of Gorshenin Institute in Kyiv, Vadym Omelchenko, that the AA might become the main geopolitical

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accomplishment for current leaders of European structures. The statement illustrates the fate of several EU initiatives and their general failure to have an impact in two of the countries of the Eastern Partnership where the issue of human rights violations has precluded close cooperation, namely Belarus and Azerbaijan.

Conversely, the EU has opted to ignore some of the glaring issues in domestic Ukraine and may circumvent some problems by choosing, as suggested earlier, to ratify the AA separately at a later date – it has already been accepted by the Ukrainian Cabinet – as well as allowing Ukraine to make some token gestures without following up with meaningful reforms.

From the EU perspective let us focus for a moment on the most critical issue concerning relations with the Ukrainian government, namely the continuing incarceration of opposition leader and former Prime Minister, Yulia Tymoshenko, jailed for seven years in 2011 for negotiating a 2009 deal with Vladimir Putin on gas prices that, according to the court, brought harm to Ukraine. The sentence also banned her from any role in politics for a 10-year period. The EU has hardly presented a united front on the issue – though at the recent economic summit in Yalta Lithuanian president, Dalia Grybauskaitė, stated that: 'the request from the European Union on Tymoshenko's case is still on the table and, without a solution, I do not see a possibility for the signature'. The issue has divided Western analysts, whereas Tymoshenko's erstwhile Orange partner, former president Yushchenko has called for the Agreement to be signed whether or not Tymoshenko is released first.

As Taras Kuzio pointed out in a recent commentary, it is impractical for the Ukrainian president to release Tymoshenko either fully or for medical treatment in Germany, Canada has also offered to assist her. Given a direct choice between her release and pardon – and there are further impending charges about her involvement in the 1996 murder of businessman Yevhen Shcherban – and a potential failure of the Vilnius summit, Yanukovich would opt for the latter, whatever its implications for Ukraine's integration with the Russian-led Customs Union.

Yanukovich is not a politician in the Western sense of the word. He does not care particularly about his place in history, or taking a dramatic westward step. Rather like the Regions Party leaders with whom he keeps company and rules Ukraine, the Ukrainian president puts survival and his personal future ahead of that of the national interest.

In short, after many meetings at different levels, it is still not apparent to the EU leaders that their Ukrainian counterparts are more concerned about power than a European future. British analyst Andrew Wilson has stated that Yanukovich is ignorant of how the EU works, believing that the crucial matter is a balance of power and that the EU's concern for Tymoshenko is ritualistic. The agreement with the EU is simply a business solution that will keep Russian oligarchs out of their domain. In turn, the Ukrainian opposition perceives its task as supporting what it terms the 'criminal government' in its path toward Europe before defeating it in the elections. Implicitly, the EU is for the moment at least enhancing the re-election chances of the Regions leader simply by dealing with him.

At the same time, the potential of Ukraine and its \$330 billion economy for the Europeans seems obvious. Yet they fear the creation of two hostile trading blocs, using high tariffs, quotas and other restrictive measures that will impede the free flow of goods. And many European leaders are wary of such an impasse, including newly re-elected German Chancellor Angela Merkel. On the other hand, the Europeans have shown great patience in keeping the agreement afloat in the face of the Ukrainian government's painfully slow progress on the suggested reforms – most of which were rushed through parliament hurriedly in September as the summit approached, though they remain more on paper than reality.

Conclusion

In the long term, can Ukraine become a potential member of the EU? Questions arise over the expedience of further EU expansion given the recent crises in member states. There are fears also over the likely impact of adding a country of over 40 million to the mix, one with deep internal problems and divisions. The irony is that an anti-Orange and in many respects anti-Ukrainian government is leading the way toward western integration and for reasons that may have little to do with any form of commitment to democracy and economic reforms. In the future, it will be necessary to ensure several things for success:

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1. Fundamental economic reforms, including privatisation (without restrictive conditions attached) and revamping of obsolete industries that require subsidies to survive.
2. Oligarch investment in the Ukrainian economy rather than in private bank accounts abroad, which may require a fundamental assault on corruption.
3. Ensuring that the presidential elections of 2015 are free and fair – it will require careful monitoring of election commissions, likely lowering the minimum percentage required to get seats in parliament (the new quota of 5% would likely mean that even the Communists or Svoboda may not get seats after the elections, and many smaller parties would be excluded), the first past the post system would likely favour the Regions Party. There is a need also to maintain a national vote for president rather than a parliamentary one and to reassess the ways in which election commissions are put together.
4. Monitoring of human rights in Ukraine must be made a priority for the EU, especially given the increased chances for a continuation of Yanukovych in office.
5. As noted, the signing of the AA and subsequent deeper integration that may ultimately end with EU membership will undermine the purpose and tactics of the Ukrainian opposition, which taken together won the majority of votes in the last election. On the other hand, a united opposition with a single leader running in the next presidential election might profit from the declining economic fortunes of Ukraine in 2014 and early 2015.

Finally, if one can separate the Association Agreement from economic and human rights issues, it will mark a fundamental turning point for the Ukrainian state, and a path oriented away from the Soviet legacy toward a European future. In itself, this will be a significant achievement, one that has been attained in a stumbling and often uncertain manner, and in spite and in part because of Russian truculence and threats. When the Orange Revolution occurred in late 2004, many observers felt that this might be the logical direction for Ukraine to take.

For a variety of reasons, the Orange presidency of Viktor Yushchenko failed in a spectacular fashion. The corruption pervasive during the time of Leonid Kuchma's leadership not only remained in place; it became deeper and more endemic under Yushchenko. It is markedly worse under Yanukovych. And yet the paradox is that it is this government and president who may take Ukraine into Europe. It is a mixed blessing that has resulted from compromises on the side of Brussels, and intransigence on the part of Kyiv. But it may happen, and in the long term, despite all the caveats cited, it may be for the best.

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