



EU crisis simulation 2013 issue brief

How Far Can the EU Expand? The Dilemmas of Ukrainian Membership

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While the Council of Europe faces many important issues affect the future of the EU, few involve the geopolitical pressures and question of European identity raised by the possibility of Ukraine membership. Opening membership to European democracies is a foundational concept of the EU, but Ukraine possess great difficulties; it is a very large country (roughly the same in size and population to France), poor it brings difficult relations with Russia. Ukraine has a long border with Russia; 2300 km (1400 miles) long and hosts Russia's most important navy base. Its population includes are large Russian minority. Some 30 percent of its population (14.5 million out of 45.6 million people) are native Russian-speakers. Bringing Ukraine into the EU would transform the country, and the EU. Refusing to admit Ukraine might have equally powerful consequences.



Ukraine is increasingly falling into the fold of the European Union. Many Ukrainians seek eventual membership into the EU, but a number of pressing issues must be resolved before Ukraine fully goes west. These include reforming Ukrainian bureaucracy, obeying the rule of law, cracking down on corruption, and evading Russian attempts to keep Ukraine from breaking away from its unhealthy Eurasian ties. At stake is not just the future of the concept of Europe and European relations with Russia, but the future of Ukrainian democracy and national identity.

As stated in the *EU Council Conclusions on Ukraine* of 10 December 2012, Ukraine's EU status focuses on three elements of reform:

- The compliance of the 2012 parliamentary elections with international standards and follow-up actions,
- Ukraine’s progress in addressing the issue of selective justice and preventing its recurrence, and
- Implementing the reforms defined in the jointly agreed Association Agenda.

The *Association Agenda* (the document guiding negotiations between Brussels and Kyiv) dictates broadly that Ukraine gains “Respect for the principles of transparency, accountability and inclusiveness.” Meeting EU demands, particularly the release of former Prime Minister Yulia Tymoshenko, imprisoned since 2011 under Soviet-era laws making officials criminally liable for their effects of their decisions, a conviction widely regarded as a political motivated effort to reduce her influence, are among the barriers to eventual Ukrainian accession.

The other side of Ukraine-EU relations involve Russian relations. Admitting Ukraine will greatly antagonize Russia, which believes the long border, history of imperial rule, and presence of the Russian speaking minority, give it rights in Ukrainian decision-making. Ukraine must attempt to gain western acceptance while placating Russia. Russia is an important trading partner and uses trade coercion—suspending Ukrainian trade and threatening to stop natural gas exports—to pull Ukraine back into its fold. Above all, Russia prefers Ukraine join its Customs Union for former Soviet-states.

Ukraine and the European Union

Background: EU-Ukraine Relations

Political relations between the EU and Ukraine began in 1994 with the signing of the *Partnership and Cooperation Agreement* (PCA), which focused on economic and social issues, the necessity of improving public government, and the guarantee of free press and civil rights. The PCA entered into force in 1998 and expired in 2008. The first EU-Ukraine summits occurred in September 1997 and October 1998. Political relations were defined as a “strategic and unique partnership.” Early issues concerned economic transition, human rights, and issues surrounding the containment of the Chernobyl nuclear disaster.

On 21 February 2005, the European Council endorsed a *Joint EU-Ukraine Action Plan*, based on the PCA of 1994. This plan provided a comprehensive and ambitious framework for joint work with Ukraine in all key areas of reform.

In May 2009, the Eastern Partnership was established, which is a forum aiming to improve the political and economic trade relations of the EU with the six post-Soviet states of “strategic importance:” Ukraine, Belarus, Moldova, Azerbaijan, Armenia, and Georgia. The draft EU summit declaration states, “Shared values including democracy, the rule of law, and respect for human rights will be at its core, as well as the principles of market economy, sustainable development, and good governance.” The Partnership seeks to provide the foundation for new Association Agreements between the EU and those partners who have made sufficient progress towards the central principles.

Under the Eastern Partnership, Ukraine, as well as Poland, reached new visa agreements, which replaced visas (for traveling into EU member states) with simplified permits for Ukrainians residing within 30 km of the border. Nearly 1.5 million people benefit from this agreement, which took effect on 1 July 2009.



Ukrainian President Viktor Yanukovich

Ukraine and the EU negotiated between 2009 and 2011 an Association Agreement (AA), a treaty between the EU and a non-EU country that creates a framework for co-operation between them. This AA would replace the existing PCA, aims for political association and economic integration, includes a comprehensive free trade area, and runs parallel to the negotiations for a visa-free regime. It does not, however, contain a membership plan for Ukraine, even though it mentions the European aspirations of Ukraine.

Ukraine and the EU have also been working on a *Deep and Comprehensive Free Trade Agreement* (DCFTA). Work began in 1999, but formal negotiations did not unfold until February 2008. As of May 2011, three outstanding issues still needed to be resolved in the free trade deal: increased quotas on Ukrainian grain exports, access to the EU's services market, and geographical names of Ukrainian commodities. Despite these outstanding issues, Ukraine was ready to sign the agreement as it stood. The finalized agreement was initialed on July 19, 2012, and the ratification process began.

Further, the European Council and Ukraine announced an action plan for Ukraine toward the establishment of a visa-free regime for short-stay travel. This plan outlined major improvements in Ukrainian border control and migration and asylum policies. Negotiations for an amendment to the 2007 Visa Facilitation agreement, which expanded the subset of individuals eligible for simplified visa procedures to include students, NGO representatives, and holders of official passports, were finalized in December 2011. The European Parliament ratified the agreement in April 2013 and the European Council finalized it in May. Ukrainian President Viktor Yanukovich expects negotiations for full visa-free travel to be completed by the end of 2014.

The Barriers

The Association Agreement and the DCFTA are unlikely to be ratified unless Ukraine makes numerous adjustments, as required in the AA. These include:

- Strengthening the stability, independence, and effectiveness of institutions guaranteeing democracy and the rule of law, and in particular
 - Promoting an inclusive constitutional reform process designed to further develop a constitutional system of effective checks and balances between state institutions
- Ensure the independence of the judiciary and the effectiveness of the courts and of the prosecution, and in particular

- Ensure respect for human rights and fundamental freedoms by comprehensive cooperation on the protection of human rights and fundamental freedoms, including:
 - Promoting the implementation of international and regional human rights standards
 - Freedom of expression, assembly, and association
 - Ensuring respect for the rights of persons belonging to minorities
 - Combating torture and inhuman degrading treatment
 - Ensuring equal treatment and respect for children’s rights
 - Ensuring respect for trade union rights and core labor standards
- Combating corruption

These requirements, among others, indicate that Europe is concerned with the “stark deterioration of democracy and the rule of law,” as European Commission President Jose Manuel Barroso put it. In particular, all eyes are on Ukraine to release former Prime Minister Yulia Tymoshenko from prison, limit human rights abuses, and reduce widespread corruption.



Former Prime Minister Yulia Tymoshenko

The Tymoshenko Case

A number of criminal cases have been opened against Tymoshenko since May 2010. A trial began, on 24 June 2011, in the so called “gas case,” a contract with Russian gas company Gazprom on supplies of natural gas to Ukraine, signed in 2009. The deal was seen as detrimental to the Ukrainian economy, and Tymoshenko was charged with abuse of power and embezzlement. On 11 October 2011, a Ukrainian court sentenced her to seven years in prison after being found guilty on all counts. Tymoshenko is currently being held in a hospital in Kharkiv under police surveillance, where she has been since being diagnosed with a herniated spinal disc in May 2012.

The European Union and other international organizations see the conviction as selective justice, refusing to move forward with the Association Agreement and Deep and Comprehensive Free Trade Agreement. The EU has repeatedly called for the release of Tymoshenko as a main condition for signing the AA. The European Court on Human Rights, on 30 April 2013, deemed the Tymoshenko judgment as politically motivated and a violation of

human rights. On 5 September 2013, the Council of Europe's Committee for the Prevention of Torture published a report including official proof that physical force has been used against Tymoshenko. The EU and other member states have been pressuring Ukrainian President Yanukovich and his Azarov Government to suspend the detention of Tymoshenko because of her degrading health.

Human Rights Abuses

Until recently, human rights in Ukraine were better than those in most former Soviet republics. In recent years, Ukraine had been labeled as "free" by organizations such as Freedom House. After the early 2010 election of President Yanukovich, however, international organizations began to voice their concerns. Freedom House changed Ukraine's status from "free" to "partly free," citing "a more restrictive environment for the media, selective prosecution of opposition figures, worrisome intrusiveness by the Security Service of Ukraine, widely criticized local elections in October 2010... and erosion of basic freedoms of assembly and speech." Amnesty International also saw "an increase in the number of allegations of torture and ill treatment in police custody, restrictions on the freedom of speech and assembly, as well as mass manifestations of xenophobia."

The 2010 Reporters Without Borders *Press Freedom Index* gave Ukraine a rank of 131 (out of some 200 countries), dropping from 89 a year before. In December 2011, the International Federation for Human Rights labeled Ukraine "one of the countries seeing the most serious violations against human rights activists." And, as of 17 January 2013, Ukraine has not won one of its 211 human rights cases at the European Court of Human Rights.

Widespread Corruption

Ukrainian society is fraught with corruption. Together with Colombia and Brazil, Ernst & Young placed Ukraine among the three most corrupt nations of the world in 2012. The 2012 Transparency International Corruption Perceptions Index ranked Ukraine 144 out of 176 countries investigated, tied with Bangladesh, Cameroon, and Syria. Just five years earlier, Ukraine had placed 118.

In Ukraine, bribery is used to ensure that public services are delivered either on time or at all. Many Ukrainians believe that giving bribes is customary and expected. Some of the largest bribes involve more than USD 1 billion. The highest corruption levels are in vehicle inspection, the police, health care, the court system, and higher education. President Yanukovich has even admitted that corruption costs the state budget USD.5 billion in revenues annually and that, through corrupt dealings in public procurement, 10-15 percent of the state budget "ends up in the pockets of officials."

The causes of this widespread corruption seem to root back to a weak justice system, an over-controlling government, crony business-government partnerships, and a weak civil society. Corruption is an everyday occurrence, often discussed in the Ukrainian media.

Making Headway

President Yanukovich has emphasized long-term planning, especially post-2015 development. Sustainable energy as well as meeting the Millennium Development goals of reduced poverty, improved education, gender equality, reduced child mortality, improved maternal health, reduced spread of HIV/Aids and tuberculosis, and environmental sustainability are emphasized through a series of economic, social, and legal reforms. The

complete fulfillment of these goals however remains distant as long as the Association Agreement remains ungratified.

Next year marks the twentieth anniversary of Ukraine's accession to the Treaty on the Non-Proliferation of Nuclear Weapons, making the country a main contributor to disarmament. The Ukrainian president has mentioned the possibility of hosting a thematic conference on disarmament and non-proliferation, indicating Ukraine's leadership position in security assurance.

Ukraine has also made efforts to secure navigation safety and combat piracy at sea. Ukraine actively participates in United Nations missions in hot spots around the world in an effort to strengthen peace. Having taken part in more than twenty of these operations, Ukraine continues to work on existing problems related to peacekeeping activities, including those regarding the mobility and safety of air operations, legal protection of peacekeepers, and investigation of crimes committed against them.

The Orange Revolution

A series of protests and political events occurred in Ukraine from late November 2004 to January 2005. This Orange Revolution came in the aftermath of a run-off vote of the 2004 presidential election, which was claimed to be stained by massive corruption, voter intimidation, and electoral fraud. Daily demonstrations, sit-ins, civil disobedience, and strikes occurred daily after reports from several domestic and foreign election monitors that authorities rigged the results from the run-off vote of 21 November 2004 between Viktor Yushchenko and Viktor Yanukovich, in favor of the latter. The protests and demonstrations were successful. The results from the original run-off vote were annulled and Ukraine's Supreme Court ordered a revote for 26 December 2004. The second vote, now watched closely by the international community, was declared to be "fair and free." Yushchenko won with 52 percent of the vote, and the revolution culminated in his inauguration on 23 January 2005.



Viktor Yushchenko, President of Ukraine 2005–2010

The euphoria of the democratic revolution's protestors felt quickly faded as Ukraine's leaders squabbled once in power. Yushchenko carried out some limited democratic reform, made initial progress toward NATO and EU membership. This slowed because of divided public opinion, Russian pressure and Western uncertainty.

Yushchenko and his prime minister, Yulia Tymoshenko, also butted heads. This rivalry did not help conditions in Ukraine as the financial crisis reached Europe. Ukraine is heavily

dependent on steel exports, which made its economic especially vulnerable in 2008. In October of that year, the International Monetary Fund offered Ukraine a \$16.5 billion loan. Another bailout was approved in 2010 at the tune of \$15 billion. The money never arrived because the Ukrainian government failed to implement the financial reforms dictated as conditions for the loan.

Yushchenko and Tymoshenko's opponent in 2004, Viktor Yanukovich, won the presidency in 2010 and immediately turned eastward to renegotiated foreign and trade policy with Russia. He suppressed media freedom and also found an opponent in imprisoned Yulia Tymoshenko.

Politics with Russia

Russian Relations

Ukraine's geographic position lends itself to being pulled in opposite directions: to the east and to the west. More recently, and certainly it hopes in the future, Ukraine has been pulled westward and away from Russia, its longtime partner. Russian President Vladimir Putin, however, is not sitting idly by. He has been putting pressure on Ukraine to join Belarus and Kazakhstan in his Eurasian customs union, since Russia remains the biggest market for Ukrainian exports. Trade with EU countries exceeds that with Russia, but Moscow is still the largest individual trading partner. Ukraine is Russia-dependent for gas and is a crucial part of the pipeline transit route for Russian gas exports to Europe. Joining the union would give Ukraine access to cheaper gas, and Russia would ease Ukraine's excessive debt burden, much of it owned by Russia's Gazprom.

Putin also backed President Yanukovich's presidential bid in November 2004, when his rigged election was overturned in the Orange Revolution (see below). But, more appealing to Ukraine's eye than the EU, Russia would not be as resilient in renouncing human rights and rule of law abuses and would not be too concerned about ending corruption and respecting democratic principles, all of which are dictated by the EU Association Agenda.

The pull to either side is attractive. On the one hand, EU offers a bigger and richer market than Putin's Eurasian customs union and has an empirically tested formula for successful liberalization of other Soviet bloc countries. On the other hand, the westward march involves saying "no" to Putin, who has recently imposed trade restrictions in an effort to coerce Ukraine into slowing its relations with Europe. Meanwhile, Ukrainian popular support for Association Agreement ratification is over 50 percent, and President Yanukovich is not keen on joining the Eurasian group dominated by Putin.

Some Europeans, however, are concerned about Russian ploys to attract Ukraine's attention. There are calls to relax the conditions necessary for Ukraine to sign the AA, notably the release of Yulia Tymoshenko. Others feel, though, that Ukraine has been making steady progress in making reforms, despite its pervasive corruption. It is expected that Tymoshenko will soon be able to travel to Germany for medical treatment and be released thereafter, making relaxation of conditions superfluous.

Ukraine thus is caught between the attraction of Europe's market and having to make essential liberal reforms, and the appeal of the Eurasian union without having eradicate corruption, human rights abuses, and the like.

The NATO Option

While EU membership is opposed by Russia, membership with the North Atlantic Treaty Organization (NATO) would be even more provocative. Russia has left no doubt about its anger

over NATO expansion to the three former-Soviet Baltic states. Moscow would be even more affected by a 2300 km border with a NATO ally to the south.

Reacting to this pressure, talks on Ukrainian NATO membership ended with an amicable decision against membership in October 2013. Instead, relations continue to be guided by Ukraine's participation in NATO's voluntary *Partnership for Peace* and the 1997 *Charter on a Distinctive Partnership*, which established the NATO-Ukraine Commission (NUC), a consultative body. NATO has many programs to assist the Ukrainian military under Partnership for Peace. These are expected to continue.¹

Conclusion

Ukraine's chances of accession to the European Union depend primarily on domestic choices as outlined in the Association Agenda. Ukraine must reform its court system, greatly strengthen rule of law and assure universal justice (symbolized by the case of former Prime Minister Yulia Tymoshenko), regain human rights legitimacy, quell corruption, and allow the press to operate freely. At stake in the promise of EU membership is greatly strengthening democratic values, greater economic prosperity and greater freedom from Russian domination. For the European Union, Ukrainian membership would be revitalizing to the basic European project, but also politically controversial and economically expensive. Leaders and Brussels and Kyiv face strong pressures in both directions.

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