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Avenue de L'Armée / Legerlaan 10, 1040 Brussels

Engagement, Dialogue and Socialisation¹*Katrin Böttger²*

The EU is frequently being criticised for its actions in the framework of the European Neighbourhood Policy (ENP) towards neighbouring countries as being inconsistent and weak and therefore having a limited impact on transformation of countries such as Ukraine or Belarus. So far, the EU has taken a different approach towards these two countries: closer ties with Ukraine and sanctions for Belarus. Since the last presidential elections this picture has become much more blurred. After briefly analysing the most recent events in Ukraine and Belarus and the EU's and its member states' reactions to these, this paper would like to recommend a strategy of Engagement, Dialogue and Socialisation in the relationship with neighbouring countries. On the basis of recent events, it will be argued that this approach to deal with these countries and their governments promises the best long term results and will be more effective than relying on threats not to sign an Association Agreement or ill-prepared sanctions. This holds true in my opinion, for both Ukraine and Belarus despite the fact that the first is considered “free” and the latter “not free” by Freedom House. It does not mean however, that the EU should put up with violations against democracy, human rights and the rule of law, but should incessantly criticise them as they breach fundamental and universal rights and obligations.

The case of Ukraine: Yulia Timoshenko's trial and the Association Agreement

The former Ukrainian Prime Minister Yulia Tymoshenko was charged in May 2011 with abuse of office for allegedly signing an illegal gas deal with Russia in 2009. On 5 August 2011, Tymoshenko was arrested for “systematically flouting” the court proceedings by refusing to stand up or calling witnesses names. She was subsequently jailed and on 11 October 2011, Tymoshenko was found guilty, sentenced to seven years in prison, fined 137 million euro, and banned from participating in

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² Dr. Katrin Böttger is Deputy Director of the Institut für Europäische Politik (katrin.boettger@iep-berlin.de). The views expressed exclusively represent the authors and do not necessarily reflect those of the IEP.

the next two Ukrainian elections. Shortly afterwards, several older cases have been reopened against her. Tymoshenko herself had claimed that these trials are solely designed to keep her from seeking office in the 2012 elections and that the Ukrainian court wanted her in jail for the rest of her life. European diplomats believe that President Viktor Yanukovych is abusing the courts and engaging in a form of political persecution by silencing his opposition and preventing Tymoshenko from participating in the next election. This is supported by the analysis of the Danish Helsinki Committee for Human Rights, who see the sequence of events, the age of the cases and the history leading up to these trials as justifying strong suspicion and who see her right to defence and a fair trial violated while doubting the objectivity, independence and impartiality of the Criminal Justice Sector.

Immediately after the sentence, EU officials cancelled a meeting with President Yanukovych, scheduled for 19 October 2011. The subsequent immediate reactions from the EU's side were clear and categorical in saying that if Tymoshenko was sentenced and put to jail, this would endanger the signing of the EU-Ukraine Association Agreement including a Deep and Comprehensive Free Trade Agreement (DCFTA), scheduled for 14-16 December 2011. Despite the fact that the full implementation of this agreement can be expected to take at least another 5-10 years, it would constitute a major step for the Ukraine towards much closer ties with the EU. Ukraine's EU ambassador Kostyantyn Yeliseyev even equated this meeting with a geopolitical shift putting Ukraine on the road to EU accession.

Concerning the sentencing of Yulia Tymoshenko, Polish President Bronislaw Komorowski has warned Yanukovych that the trial may slow Kiev's push for closer ties to the EU. Also the European Parliament cautioned against moving forward in the wake of Timoshenko's trial, and on 20 October 2011, EU leaders decided to postpone until conditions would be more conducive to making progress.

Now that Yulia Tymoshenko has been sentenced and a motion by the Ukrainian President Viktor Yanukovych to adapt the law on the basis of which Tymoshenko had been tried has failed, and by having threatened the Ukrainian government not to sign the Association Agreement if Tymoshenko remained in jail, despite the fact that a signing of this agreement is also in the EU's interest, the EU has manoeuvred itself into a corner, which it will have dire problems to leave. There are good arguments for signing the Association Agreement despite obvious shortcomings in Ukraine's legal system. Both the opposition including Yulia Tymoshenko herself and civil society in Ukraine argue that the agreement should be signed. Even if President Yanukovych only partially implements the Association Agreement and the DCFTA, focusing on elements that he and his allies profit from, there is always the possibility that power will change hands in the next elections and that a new government after the next parliamentary elections on 28 October 2012, will be able to fully implement the agreement. Equally, representatives from Civil Society (People First) agree that the trial against Yulia Tymoshenko was unjust. However, they argue that if the EU sincerely wants to support the Ukraine in developing and asserting democratic principles, it should go ahead with the agreement. Other civil society organisations (Foundation for Democracy) proposed that the EU embark on a gentler, more moderate approach with Ukraine and ease visa restrictions. They argue that if younger generations of Ukrainians observe the successes of EU-facilitated democracy in practice and cultivate ties of their own in EU member states, they will bring their positive perceptions

back to Ukraine. Moreover, with this younger generation, a bottom-up approach will emerge and generate greater Ukrainian democratic reforms as well as strengthening EU-Ukrainian relations.

Both organizations hope that the EU chooses to embrace socialization rather than exclusion. They suggest that the EU gradually reduce official ties with Ukrainian officials without betraying the "European aspirations of ordinary citizens". While this seems unrealistic, as the official ties are the traditional and structurally logical point of reference for EU relations with third countries, the EU should and could increase ties with civil society and opposition parties, something it has failed to pursue e.g. in the northern African countries before the Arab Spring.

With civil society eager to work more closely with the EU and a pro-EU Ukrainian government reluctant to join a Russia-dominated Eurasian customs union and eager for closer economic and political ties, the EU has a number of conditionality tools to work with and should therefore pursue a two-track approach which focuses on Engagement, Dialogue and Socialisation with the government and civil society without abandoning targeted small-scale sanctions and reprimands when universal rights are violated. It should refrain however from making threats it is – out of its own interest – unable to keep. Instead, it could focus much more on a division of labour, with e.g. the German President playing bad cop and the administrative level playing good cop.

The case of Belarus: The presidential elections

Prior to the presidential elections on 19 December 2010, Guido Westerwelle, the first German Foreign Minister since 1995 to visit Belarus, and the Polish Foreign Minister Radoslaw Sikorski promised financial aid to Belarus if it and especially President Lukashenka agreed to hold democratic elections. On the day before the elections Guido Westerwelle stressed the fact that an intensification of the relations between EU and Belarus required progress on democracy, rule of law and respect for human rights in Belarus. The general lookout on Belarus was carefully confident, but on 19 December 2010, out of ten candidates, incumbent President Alexander Lukashenka was declared the winner by the Central Election Commission with almost 80% of the votes. Viewed as a rigged presidential election, a huge crowd gathered on October Square to protest along with oppositional presidential candidates. They then moved on to the seat of the government where some of them – or, as it is suspected, KGB undercover agents – tried to get into the building. The police arrested the oppositional presidential candidates and violently dissolved the demonstration. More than 600 activists, journalists and ordinary citizens were arrested and jailed where they faced ill treatment and torture. These figures include five former president candidates and fourteen other opposition activists.

Westerwelle and Sikorski had been criticised for their visit to Minsk as this would merely provide a platform for Lukashenka to present himself to the European leaders and public without him changing his policy. This criticism was enforced after the elections were not held free and fair. When taking a closer look at the sequence of events on that 19 December 2010 however, it can be seen that there was a realistic chance for a proper conduct of elections and the sequence of events does not give proof that Lukashenka had planned to violate these elections from the beginning. It is an example of the fact that socialisation processes that will be successful in the long term due to repeated

interaction with democratic forces do not follow a simple equation but require persistence and are bound to experience setbacks in the process.

The EU's demands are twofold, it demands full political amnesty for all those arrested, and an open dialogue with political opponents. The EU claims that relations could improve if Belarus demonstrates a respect for democracy, human rights and the rule of law. However, it remains committed to strengthening relations to civil society actors and the people and to maintaining a strategy of exclusion. Therefore, on 31 January 2011, the EU enacted a series of sanctions that included a number of travel restrictions and assets freezes on those responsible for fraudulent presidential elections and subsequent violent crackdowns on democratic oppositions. In June 2011, the EU banned another 150 Belarusian government officials, not all of which were still active in government anymore, however, and industry executives from applying for EU visas. In September 2011, President Alexander Lukashenka agreed to pardon four jailed activists and drop charges against another two political prisoners. While he agreed to release all others by October, this has not happened so far. President Lukashenka has made a series of remarks suggesting that he would talk with members of the opposition about Belarus' future and asked the European Union to monitor and facilitate these talks. Other officials have suggested that Lukashenka may be expressing interest in economic cooperation as a result of financial restraints that the government is facing, as well as the additional hardship of EU sanctions. Based on the fact that Lukashenka's regime is not as homogenous as it is generally made out, and that it is weakened due to the more negative economic outlook which impacts on the public's stance towards the regime, the EU should get more engaged and foster the cooperation with those groups in the government that are more favourable to interaction and eventually rapprochement between Belarus and the EU, as well as with civil society representatives. One Belarusian journalist suggests that economic sanctions were not necessary as the regime fulfils that role already since the country is suffering from availability of foreign currency, imports and foreign debt. The Belarusian Institute for Strategic Studies has echoed these sentiments by arguing that these sanctions will not affect Lukashenka's interests and will ultimately only be to the detriment of ordinary people. Despite the fact that the sanctions are small-scale these exclusion tactics, and Belarus' own harmful domestic policies have served largely to hurt ordinary constituents.

Therefore, I would argue that instead of focusing on sanctions, the EU should engage with the disappointed economic and political elites of Belarusian society and especially young, well-educated Belarusians. Financial support should of course not be granted to the government but should notably be beneficial to the public at large and civil society. This could include the support of exchange in the form of university exchange scholarships and visa facilitation notably for younger people. As could be observed at the last civil society forum in Berlin in 2010, Belarusian civil society is very active in starting to set up more democratic structures also for themselves and should therefore be supported more strongly.

Recommendations

- Instead of tightening EU visa restrictions for countries such as Belarus or the Ukraine, the EU should loosen its visa sanction policies and strengthen exchange programmes for young professionals and students.

- Engagement with civil society actors in order to establish long term links between the EU and civil society actors as an alternative to hesitant government officials should be fostered.
- In order to be able do so, the EU needs to acquire more information on actors in general and more specifically civil society on the ground to identify relevant actors as well as issues of concern to these and the public at large. This could be done by refocusing the work of the EU delegations, by strengthening them, and by them looking to cooperate more with the national EU member state's embassies in the country.
- As financial support is unlikely to be increased in the next Multiannual Financial Framework due to austerity policies in the wake of the economic and financial crisis, the EU should focus its financial aid on capacity building for civil society in order to foster bottom-up democratic reform processes.
- In the case of Ukraine, the EU should move ahead with signing or at least initial the Association Agreement in order to send a clear signal for achieving closer ties with the country.