Fine-Tuning EU Support for Ukrainian Democratization

RICHARD YOUNGS

SUMMARY

Since the Euromaidan antigovernment protests in 2013–2014, Ukraine has made some progress along the path of democratization. The country's government has stalled on many reform imperatives, however, and has recently been mired in a debilitating political crisis. The European Union (EU) needs to intensify its support for Ukraine's still-fragile democracy. While the EU and its member states have rolled out a wide range of democracy support initiatives during the last two years, there is scope to make these policies more effective. The EU can most significantly improve the impact of its reform assistance through more focused conditionality, support for a broader process of decentralization, and wider civic engagement.

Recommendations for the EU

- **Tailor conditionality to put greater focus on key political pressure points and less on technical and economic reforms.** The EU should deploy a form of political conditionality that is more closely focused on the principal obstacles to deeper democratization in Ukraine.

- **Broaden and reinforce support for decentralization to facilitate local-level political participation across the whole of Ukraine.** EU assistance should prioritize decentralization as a means of deepening participative democracy in the country, not just as a tool for conflict management in the eastern Donbas region.

- **Widen support for agents of change to include new and not necessarily pro-EU civic and political actors.** The EU should develop a wider and more locally driven profile on civil society support that better connects civic movements to Ukraine's political parties.

ABOUT THE AUTHOR

Richard Youngs *is a senior associate in the Democracy and Rule of Law Program, based at Carnegie Europe. He works on EU foreign policy and on issues of international democracy.*

Youngs is also a professor of international relations at the University of Warwick. Prior to joining Carnegie in July 2013, he was the director of the European think tank FRIDE. He has held positions in the UK Foreign and Commonwealth Office and as an EU Marie Curie fellow. He was a senior fellow at the Transatlantic Academy in Washington, DC, from 2012 to 2013.

His latest books include The Puzzle of Non-Western Democracy *(Carnegie, 2015);* The Uncertain Legacy of Crisis *(Carnegie, 2014);* Europe in the New Middle East *(Oxford University Press, 2014); and* Climate Change and European Security *(Routledge, 2014).*

REFORM GAINS AND OBSTACLES

Since taking office in May 2014, the Ukrainian government led by President Petro Poroshenko has developed a reform program that ostensibly embraces all crucial areas of political reform. As of March 2016, over 80 reform laws had been passed. A National Reform Council has gathered a wide range of stakeholders to take forward democratization. The government has set up six new anticorruption institutions. Reforms enacted include a law to ensure more transparent public procurement, in recent years a major source of corruption. New legislation has strengthened judicial independence and parliamentary control of the security forces. In late 2015, the government introduced a law that will provide public funds for political parties; this should weaken oligarchs' nefarious hold on the country's party system.

Meanwhile, Ukrainian civil society has pushed forward reforms in a more sustained fashion than it did after the Orange Revolution in 2004. Civic activism since 2014 has involved a much wider range of actors than the professional nongovernmental organizations (NGOs) that led the 2004 revolution.

Notwithstanding such advances, the pace and reach of reforms have disappointed many. While a significant amount of new legislation has been passed, fundamental reform of governance structures is not yet evident. A familiar doubt remains over whether formally democratic laws will be fully implemented. Resistance to reform is still strong in ministerial bureaucracies.

Ukrainian politics are characterized by a pluralistic competition for rents; this pluralism militates against authoritarianism but also against deep-rooted democratization. Oligarchs' structural power has not yet been decisively downgraded. They still control whole groups of parliamentarians and are thus able to frustrate reforms. A dynamic of rentierism based on political patronage persists.

Reform-leaning politics are still personalized more than institutionalized. Critics fear that Ukraine is drifting toward a system in which power is concentrated in the hands of the president. There is little coherent, programmatic opposition in the parliament. Political parties remain inchoate and lacking in internal democracy. The president has tightened his control over the national guard, anticorruption bodies, and economic resources.

The fallout from these obstacles to reform is becoming increasingly visible. In early 2016, the economy minister resigned in frustration at the paucity of reform efforts. Three parties left the governing coalition, leaving the administration without a majority in the parliament. Prime Minister Arseniy Yatsenyuk narrowly survived a vote of no confidence, but then indicated he may be willing to step down. Talks on the formation of a new governing coalition and the appointment of a new prime minister are ongoing. This series of events has unsettled Ukraine's reform process.

At the same time, conflict in Ukraine's eastern territories of Donetsk and Luhansk, which are occupied by Russian-backed separatists, has created a sense of solidarity in adversity among Ukrainians. But the government also argues that the war militates against sensitive and costly reform that could debilitate resistance to separatism. Critics charge Poroshenko with using the security situation in the east as a pretext for delaying reforms.

The security reform challenge is how to merge irregular paramilitary volunteers into the national security forces. A broader worry is that the conflict is breeding a military-edged nationalism in some sections of civil society that sits uneasily with the tenets of liberal democracy.

In part because of the conflict, decentralization has been delayed, yet, it remains imperative for democracy building. A decentralization reform package is struggling to gain the necessary majority in the parliament to become law. The government is obliged to devolve powers to the territories of Donetsk and Luhansk under the February 2015 Minsk II peace accord. Kyiv fears that such moves could weaken the unity of the state and serve as a platform for Russian influence. Meanwhile, decentralization in other parts of Ukraine remains halting and limited to specific policy sectors.

HOW TO RECALIBRATE EU DEMOCRACY SUPPORT

European support will be key to overcoming these reform challenges. The EU and its member states have offered significant backing for Ukraine's democratic reforms. The range and density of European support initiatives is impressive. The EU has increased funding for democracy programs since 2014 and exerted tougher pressure on Ukraine's political elite to expedite very specific areas of reform.

Despite the undeniable gear change in EU approaches, however, there is scope for improvement—especially in light of the complex and mixed state of reform in Ukraine. EU actors can most usefully fine-tune their reform support in three areas: conditionality, decentralization, and civil society. These are the areas in which refining EU policy would have the most significant impact on Ukraine's fragile democratization and in which the most room for improvement exists.

Tailor conditionality to put greater focus on key political pressure points and less on technical and economic reforms.
The EU's primary leverage over Ukrainian political change is its ability to condition its support on reform progress. Indeed, this is where the union has clear added influence compared with other international actors—because of the amount of money it provides and because EU laws are used as the template for many Ukrainian reforms. The EU needs to strike a delicate balance between backing the beleaguered Poroshenko government, on the one hand, and keeping up pressure for deeper reform, on the other.

EU conditionality has undoubtedly contributed to the reform process. The EU has required Kyiv to pass procurement and antibribery laws before authorizing the release of successive tranches of International Monetary Fund (IMF) and World Bank financial assistance. The union has indicated that funds will be held back if judicial reform suffers further delays. EU officials want to see actual corruption cases brought—not just formal reforms written—before contemplating further aid increases. The EU has tightened conditions to prevent the misuse of aid. Arguably the EU's strongest leverage has come from conditionality attached to a new visa regime for Ukrainians traveling to the EU, and this has been used to push the government to unblock anticorruption and nondiscrimination laws in particular.

However, some elements of EU conditionality are too onerous and bureaucratic. Most have nothing to do with democracy. Ukrainian civil society critics argue that the EU is expending most of its political capital on harmonization of technical standards, not on core political reforms. They say that EU support relies too heavily on relatively soft training and capacity-building programs, while political pressure to unblock deep reform is lacking.

Moreover, many Ukrainian reformers think some EU member states are raising extraneous conditionality hurdles to placate Russia, not out of a genuine concern for Ukraine's democracy. And many believe that EU member states have not granted the visa regime yet because they are not, in practice, willing to accept more immigration. Conditionality here risks becoming a disincentive rather than an incentive to reform.

All this means that the EU needs to be more convincing in the way it modulates democratic conditionality by being more consistently focused on the most pressing imperatives for democratization and more flexible in other areas. There is both genuine momentum behind reform in Ukraine and self-serving stalling. The EU's use of political conditionality needs to be molded around this varied picture by homing in on the obstacles that are blocking deeper democratic reform.

Supporting deeper reform would require the EU to expend less of its finite leverage on some elements of economic reforms and on the stipulation that Ukraine perfectly align hundreds of pieces of technical legislation with EU laws. More democracy-led conditionality would entail the EU responding to real-life power dynamics in Ukraine as opposed to specifying

long lists of formal legislative requirements pertaining to different domains of sectoral governance. The EU needs to concentrate its influence on pushing for more fundamental change to Ukrainian politics.

Addressing these political shortfalls would entail more assiduously targeting conditionality at the paucity of democratic culture in the parliament, the personalized control of political parties, the distortion of decentralization plans, and instances of overweening executive control. In concrete terms, the EU could do this by developing a set of indicators to cover these choke points to reform. It could also vary at least some parcels of its aid in accordance with the government's progress—or lack thereof—on these measures. The EU has dozens of sectoral cooperation programs in operation that could be tied to progress on more specific indicators of democratic quality.

Ukraine's political crisis of early 2016 does seem to have prompted some EU governments to move in this direction, as they complain about constant reform delays and government infighting. Yet the focus is still mainly on delaying IMF credit linked to economic reforms. Instead, EU rewards should flow as and when key choke points are unblocked, whether in presidential or prime ministerial offices, local clan structures, personalized parliamentary maneuvering, or state bureaucracies.

The need for the EU to get conditionality right has been underplayed, as the union's main focus has been on promises of new aid and on the Donbas conflict. But many reformers in Kyiv now say that an assertive focus on key political pressure points is more necessary. Ukraine is replete with a vast range

of externally funded technical assistance; indeed, there are so many programs running that in some areas like judicial reform the main need is for donors to weed out duplication. The abiding concern is not so much a shortage of technical expertise as the EU's reluctance to put pressure on the high-level political obstacles to deeper reform.

Broaden and reinforce support for decentralization to facilitate local-level political participation across the whole of Ukraine. Decentralization is a pivotal area of political reform. While decentralization is not inherently beneficial for democratization, evidence shows that when accompanied by strong institutions and a rules-based legal culture, it can provide a fillip to popular support for political reforms. This challenge has become particularly important in Ukraine because some form of decentralized status for parts of the east will be necessary to calm the conflict in the Donbas region.

To maximize its contribution to democratization, the EU needs to broaden its focus and support a process of decentralization that adds more systematically to democratic quality across the whole of Ukraine.

Decentralization is already at the top of the EU's agenda and the subject of several large-scale projects. One new €100 million ($111 million) decentralization initiative was introduced in late 2015. While the EU and several member states support devolution, however, they have done so mainly through the lens of conflict management, not through a concern with democratic quality. They are keen to support decentralization expressly to undercut Russia's case for aggression.

Supporting decentralization is indeed a sensible and necessary element of conflict mitigation. However, the Minsk II peace deal has arguably diverted attention from the need for a deeper process of decentralization.

While the decentralization package that is currently stalled in the Ukrainian parliament offers a solid way forward, it is focused mainly on the formal division of powers among Ukraine's different levels of government. It is not strongly targeted at opening up local governance processes to public participation. Indeed, the package controversially gives the president power to appoint local prefects—a provision the government says is necessary to ensure state unity in the face of Russian meddling in many local communities.

The EU can contribute most usefully to decentralization in Ukraine by supporting a far wider range of locally based projects aimed at stimulating and improving community-level political participation. It can also help by working to deepen the democratic credentials of Ukraine's various levels of subnational decisionmaking. The EU needs to push the Kyiv government, including through the use of targeted conditionality, on those aspects of decentralization not related uniquely to Donbas.

EU actors need a range of programs to ensure that decentralization is about encouraging citizen-oriented, participative democracy across Ukraine, not just assuaging separatists in the east. A program of decentralization that is about improving the lives of all Ukrainians and not simply addressing the geopolitical exigencies of the Donbas conflict is essential—not least because such a program will make decentralization easier to sell to

the many Ukrainians who at present believe it smacks too much of favoritism toward the Russian-backed rebels.

The EU needs to help turn decentralization into a concept that Ukrainian citizens see as beneficial in giving them greater sway over local decisions. The government has devolved some policymaking and fiscal competences to regions (oblasts) and districts and is now offering funds to newly amalgamated local communities. The EU's recently launched decentralization program rightly focuses on technical capacity building at this local level. The union should add to this institutional focus by introducing a series of projects with civic groups outside Kyiv to ensure that such formal changes ignite real citizen participation at a local level and foster a greater sense of popular ownership of decisionmaking. Helping citizens influence local budgeting processes and expenditure decisions has proved particularly effective in other countries. This is categorically not about the EU pushing for a French, German, or Spanish model of decentralization but should be about nurturing more active citizenship through locally empowered, responsive institutions.

While the EU's new decentralization initiative is a good start, the EU should also bring forward more political initiatives to boost the democracy-building value of decentralization across the whole of Ukraine. The union can do this by supporting many more projects in the different regions of Ukraine to encourage local-level political participation and more effective subnational checks and balances on the executive. The EU has a rich experience in democratic decentralization it has not yet deployed fully in Ukraine.

Widen support for agents of change to include new and not necessarily pro-EU civic and political actors. The EU needs to update the way it supports civic and political actors. EU officials do not need to be told how important it is to keep supporting civil society. The EU has drawn up a road map with local civic groups and begun a €10 million ($11 million) program for civil society. The EU-Ukraine Association Agreement, a framework for political and economic cooperation, includes a coordinating committee with Ukrainian civil society.

Yet the constantly heard complaint from Ukrainian reformers is that external donors, including the EU, are not capturing enough of the new local-level civic activism that has taken shape since the 2013–2014 Euromaidan protests. The EU needs a much broader and more dynamic mapping of Ukraine's highly fluid civic sphere as a platform for better evaluating and monitoring EU civil society support.

EU programs are good at backing civil society organizations that already exist and have strong roots, but they are less good at helping new organizations form. And EU schemes do not work enough on building links between NGOs and other civic actors like entrepreneurs or church-based groups whose actions have some impact on politics.

Compared with other countries with transition experiences, Ukraine benefits from a relatively strong and sophisticated civil society. In contrast, Ukraine's Achilles' heel is the weakness and dysfunctional nature of its political parties. Yet EU support aimed at building stronger, ideologically coherent, and programmatic political parties remains extremely limited.

The European Endowment for Democracy, which receives funds from the European Commission and some EU member states, has tried to foster innovative linkages between the civic and political spheres, for instance by helping activists' efforts to forge new party structures. But such approaches are few and far between. U.S. party foundations are well ahead of their European counterparts in the vital area of political party work, in particular on party financing issues and manifesto preparation. The EU and member states need to rectify this oversight.

The EU also needs to widen its circle of civil society and political interlocutors. It needs to engage with those who do not share liberal, pro-EU views—a sector that is gaining ground in parts of Ukraine. This is because Ukraine needs deeper civic capabilities, not merely louder pro-EU voices.

EU officials must be careful not to nourish the continued personalization of Ukrainian politics. They must not conflate pro-democracy with pro-European actors. EU diplomats insist they do not do this, and yet the perception persists among many Ukrainians that the EU equates supporting reform with backing the current government.

A healthy Ukrainian democracy requires a stronger opposition than currently exists. Democratic deepening is not a matter of the present government simply being given more capacity to implement the EU Association Agreement. The EU still tends to assume that whatever it does to help countries implement the union's rules is automatically good for democracy, but this is not necessarily the case. The EU needs to do more to engage with former figures of ousted president

Viktor Yanukovych's Party of Regions who are genuinely intent on constructing an effective democratic opposition.

To target the most promising agents of change, local voices need to have more of a say in where EU support goes. While European policymakers concur fully with the importance of local ownership, they could do more to encourage this in practice. The EU could consider setting up something along the lines of a civic activism forum that provides space for emerging, informal civic movements and previously excluded actors to define their priorities for external support in Ukraine.

The European Commission's Support Group for Ukraine is an unprecedented initiative to help the country implement reforms across all major sectors, yet the largest part of EU support still takes the form of old-style twinning initiatives that place European officials in Ukrainian ministries and technical agencies. This approach has many merits, as it provides a European reference point for reform and concrete institutional templates. But it needs to be balanced more equally with approaches that give greater scope for local input from newer and more community-rooted groups.

Despite the extensive array of EU programs that have been started since 2014, Ukrainian reformers still complain that the union is exporting standard legal templates not sufficiently shaped to Ukraine's specificities. They insist that the EU's preset priorities leave little room for local actors to define different reform routes and make the union's decision-making process very opaque. Reformers are increasingly angry that most money is going to external advisers instead of core support for Ukrainian civic organizations. These are

generic complaints heard in every country, and they are not always based on a correct understanding of EU initiatives. Yet the EU can and should improve its connection with local concerns and ideas.

CONCLUSION

These three recommendations offer a very select set of suggestions for how the EU can mold its policies more tightly around the specific state of play in Ukrainian reform. Without discounting the importance of other areas of democracy building, the three core issues of conditionality, decentralization, and civil society engagement offer the most significant potential for fine-tuning EU approaches.

Contrary to much skeptical comment, the EU has rolled out a wide range of relatively large-scale reform initiatives and sought to improve the effectiveness of its democracy support. Many of the criticisms made against EU support fail to take account of the notable improvements the union has introduced since 2014.

The challenge now is a subtle one of the EU modifying the precise approaches it deploys to maximize the effectiveness of its ongoing support for democratic reform. This will be no easy task, as Ukraine seems to stutter from one political crisis to another—while a change in prime minister could represent a new start, the country's politics remain fractious and brittle. Yet these improvements to democracy support are all the more necessary precisely because of the reform process's fragility. ◖