

Ukraine

A Net Assessment of 16 Years of Independence

Implementation of Key Tasks and Recommendations

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Introduction

In February 2008, the Center for Strategic and International Studies (CSIS) publicly released a report entitled *Ukraine: A Net Assessment of 16 Years of Independence*. The report was prepared for the U.S.-EU Partnership Committee for Ukraine, which is cochaired by Zbigniew Brzezinski and Volker Ruehe. It outlined the impressive achievements that the Ukrainian people had made since regaining independence in 1991 while also noting areas of major shortfalls and setbacks in building a modern, democratic, European state.

The report concluded with key tasks and recommendations for the Ukrainian government, European Union, and U.S. government. In the view of the authors, these comprised the key areas for attention, both in terms of internal Ukrainian reform and strengthening Ukraine's links with European and Euro-Atlantic institutions. The key tasks focused on steps that could be accomplished relatively quickly, with a view to taking advantage of the fact that, in February 2008, Ukraine had almost two years before the next scheduled election. Copies of the report were transmitted to senior Ukrainian government officials in both the presidential secretariat and the cabinet of ministers in Kyiv, as well as to representatives of the European Union and the U.S. government.

This paper assesses the progress made by the Ukrainian government, European Union, and U.S. government in implementing the recommendations over the past year.

Overview

Unfortunately, far less progress has been accomplished than the assessment's authors had hoped. Political infighting at the highest levels in Kyiv, which began at the start of 2008, has left the presidency and cabinet of ministers badly divided, often at cross-purposes, and unable to work together to promote needed reforms.

The political discord—which continues despite challenges posed by the global financial crisis, the August conflict between Russia and Georgia, and the January “gas war”—raises troubling questions about the responsibility and political maturity of Ukraine's senior leaders. Unfortunately for the country, they all too often put petty political disputes above the national interest. This failure of leadership has major negative consequences.

As a result of the continuing political dissonance, few of the February 2008 recommendations for political, economic, and energy sector reform have been implemented. Little has been accomplished in the areas of constitutional, judicial, administrative, or economic reform. In the energy area, two positive changes emerged from the January “gas war” with Russia: Ukraine will start paying closer to “European market prices,” thereby eliminating one source of Moscow's political

leverage, and the sides agreed to eliminate the shady intermediary firm RosUkrEnergo. Otherwise, little progress has been made on energy reform.

On the foreign policy front, Ukraine has made some progress toward achieving an enhanced agreement with the European Union. NATO leaders at the Bucharest summit in April agreed that Ukraine ultimately will be in the alliance, but they could not reach consensus on giving Ukraine a membership action plan.

EU and U.S. government actions to implement their recommendations also have fallen short of the mark. Infighting in Kyiv is responsible in part. For example, neither EU nor U.S. officials have found an effective way to encourage Ukraine to tackle energy sector reform. The European Union has offered Kyiv an enhanced agreement, but internal EU differences precluded any language on an eventual membership perspective.

The U.S. government increased its high-level contacts with Ukraine, but persistent requests to Ukrainian leaders to end the infighting had no apparent effect. In mid-March, the full weight of U.S. diplomacy engaged in a failed attempt to build NATO support for Ukraine's bid for a membership action plan. This raises the question of whether earlier U.S. diplomacy might have proven successful.

The August Russia-Georgia conflict highlighted Moscow's readiness to assert itself more aggressively in the former Soviet space, a point reinforced when President Dmitry Medvedev on August 31 spelled out five principles underlying Russian foreign policy. One included a claim to a sphere of "privileged interests" in the former Soviet space; a second asserted for Russia the right to intervene in other countries to protect the rights of Russian citizens. Concern grew regarding Russian intentions with regard to Ukraine.

Unfortunately, rather than serving as a catalyzing agent for a more unified political stand by Ukrainian politicians, Russia's action in the Caucasus only highlighted their political differences: President Yushchenko strongly condemned Russia's actions; after a week of silence, Prime Minister Yulia Tymoshenko expressed support for Georgia and Georgian territorial integrity but did not criticize Moscow. Regions Party leader Viktor Yanukovich supported Russia's actions and called for Ukraine to recognize South Ossetia and Abkhazia as independent states, legitimating a very troubling precedent for Crimea.

Ukraine's Strained Political Situation

The alignment between President Yushchenko and Prime Minister Tymoshenko has abysmally failed to provide effective governance. The presidential secretariat and cabinet of ministers have not worked together and have not pursued a common agenda. Within days after her appointment as prime minister in December 2007, the presidential secretariat, led by Chief of Staff Viktor Baloha, launched a near continuous stream of criticism at her and her cabinet's

performance. Concern that she might challenge President Yushchenko in 2010 for the presidency apparently motivated this.

Although Prime Minister Tymoshenko tolerated the critiques at first, she and her supporters by March had begun leveling regular criticisms at the president and presidential secretariat. In early May, the Rada witnessed the unusual scene of Bloc of Yulia Tymoshenko (BYuT) deputies blocking the speaker's rostrum to prevent the president—the leader of their coalition partner—from addressing the Rada.

A depressing pattern emerged in which the president and the presidential secretariat blocked cabinet initiatives, while the prime minister and the cabinet failed to implement presidential directives. As a result of such stalemates, the government (the term used here broadly to encompass both the presidential administration and the cabinet) accomplished little in the key political and economic reform areas needed by Ukraine.

In early September, BYuT joined with Regions to pass several laws (by constitutional majorities—i.e., exceeding 300 votes) that would reduce the authority of the president and increase the prime minister's powers. President Yushchenko vetoed them, and Our Ukraine/People's Self Defense (OU/PSD) withdrew from the parliamentary coalition. Prime Minister Tymoshenko called for the coalition's renewal. This effort failed to renew the majority coalition, as did parallel talks between BYuT and Regions. On October 8, President Yushchenko announced the Rada's dissolution, then he issued a decree for pre-term elections on December 7. He later suspended the decree, given the need for Rada support for an International Monetary Fund (IMF) package. On December 9, a new coalition formed, with the Lytvyn Bloc joining OU/PSD and BYuT.

Political and Economic Reform

The February 2008 net assessment posed a number of recommendations for the Ukrainian government regarding needed political and economic reforms.

Constitutional reform. Ukraine's constitution and associated laws need to be amended to eliminate ambiguities and clearly delineate authority between the president and prime minister, and between the Rada and executive branch. In December 2007, President Yushchenko, who favors strengthening presidential powers, established a National Constitutional Council to propose constitutional amendments. BYuT and Regions Party members felt the composition of the council was unbalanced and boycotted the meetings. (Prime Minister Tymoshenko in April switched her support to a parliamentary system.) No comprehensive proposal for amending Ukraine's constitution has been put forward.

Judicial reform. Ukraine needs a judicial branch that can be relied on to render fair decisions in criminal cases, business disputes, and other matters and in which corruption is greatly reduced. Neither the government nor the Rada have put forward a program for systematic reform of the judicial branch.

Administrative reform. Ukraine requires a modern central government bureaucracy and a system in which oblast and local officials are more directly accountable to their publics. No proposals for comprehensive reform of the central government bureaucracy or to shift authority and accountability from Kyiv to oblast and local governments have been made.

Greater transparency and responsiveness. All levels of government need to be more transparent. While Ukrainians are getting more information about how their government works, this has taken the form of charges—often conflicting, sensational, and of dubious veracity—by officials in the presidential secretariat or cabinet about alleged wrongdoings by counterparts in the other institution. Neither the presidential secretariat nor the cabinet has put in place mechanisms for regularized transparency on governmental decisions.

Commercial code abolishment. The commercial code contradicts the more market-oriented civil code and leaves business subject to unpredictable and contradictory interpretations by courts. Although the three major parties in the Rada call for better conditions for business, the Rada has not abolished the commercial code.

Free sale and transfer of agricultural land. The creation of a land market and opening of access to mortgages would generate substantial capital inflows to the agricultural sector. Unfortunately, the Rada has not passed the necessary legislation to eliminate the moratorium on land sales. When the cabinet proposed to take limited moves within the competence of the executive branch to allow the sale of land, it was repeatedly blocked by the presidential secretariat.

A modern tax code. A modern tax code would greatly benefit Ukrainian business and ordinary citizens. Although much work had been done before the Tymoshenko cabinet took office to prepare a new draft code, no action has been taken.

World Trade Organization (WTO). One of the few achievements of the Ukrainian government over the past year has been securing Ukraine's entry into the WTO. In a rare display of unity, OU/PSD, BYuT, and Regions joined together in the Rada in April to pass the legal changes necessary to bring Ukraine's trade regime into compliance with WTO requirements. Ukraine formally entered the WTO in May. (Other positive measures of note passed by the Rada were a joint stock company law and a package of steps needed to secure an IMF loan.)

Despite the political stalemate between the presidency and the cabinet of ministers, Ukraine continued to enjoy strong economic growth during the first nine months of 2008. However, the global financial and economic crisis struck in October, and the economic downturn over the last three months of 2008 erased many of the gains of the first nine. In three months, the hryvnia lost more than 50 percent of its value relative to the dollar. Most analysts project a severe recession and major financial woes in 2009.

Strengthening Energy Security

The February 2008 net assessment posed a number of recommendations for the Ukrainian government, European Union, and U.S. government regarding energy sector reform.

In general, the Ukrainian government has taken only minor steps to increase domestic energy production and efficiency of energy use, or to decrease its dependence on energy imports from Russia. Loans from the World Bank and grants from the U.S. Agency for International Development (USAID) will eventually help improve efficiency in residential heating, and higher gas import prices are slowly forcing industrial users to conserve. Ukraine has signed its first contract to import nuclear fuel for its reactors from Westinghouse, ending a Russian monopoly.

Market prices. The Ukrainian government needs to set in train a more robust program to use markets to set energy prices. There has only been modest movement in this direction. Some steps on energy efficiency have been taken by large industries and in construction of new housing, primarily in reaction to increased import prices and pressure from the World Bank. More could have been accomplished with support for market policies and a loosening of price controls. In particular, Decree 31—which limits the price that companies involved in Joint Activity Agreements in Ukraine can charge for their oil and gas production and thus discourages greater domestic production—remains in place.

Restructuring Naftogaz Ukrainy. Naftogaz Ukrainy should be restructured so that production, pipelines, and distribution are handled separately. The limited restructuring thus far has not provided a greater degree of business transparency or competitiveness.

Dealing directly with Gazprom. In general, corruption in the energy business continues, although the elimination of RosUkrEnerg as intermediary between Russia and Ukraine should bring greater transparency to the gas sector. Ukraine's reputation as a reliable transit country suffered significantly as a result of the three-week cutoff of natural gas to Europe. Even though the primary culprits were Gazprom and the Kremlin, Ukraine had a difficult time making its case in Europe because its leadership had undermined its credibility. In the end, however, the January agreement established a closer link between "European

prices” and those paid by Ukraine, a positive step that will diminish Moscow’s political leverage.

Tax reductions. Ukraine’s tax regime and foreign investment laws continue to be disincentives to Western investors in the energy trade.

Privatization. Ukraine should privatize its remaining energy assets through open tenders. Competition should be limited to firms in countries that abide by the European Energy Charter or that have open, transparent domestic energy markets.

Charters. Ukraine should implement the transit protocol of the European Energy Charter and sign the Athens Energy Treaty. With Ukraine’s accession to the World Trade Organization, it is expected to implement some reforms in the Charter Treaty, but so far a common carrier system has not been put in place.

Technical assistance in the energy field. The World Bank has agreed to provide a \$500-million loan for modernization of pipelines and other energy facilities in Ukraine. This is a positive step, but its full impact will not be felt for several years.

Assistance on long-term energy strategy. The World Bank, European Bank for Reconstruction and Development, and USAID are all engaged in energy efficiency projects, particularly in the housing sector, with a focus on larger cities.

Support for direct contract negotiations. The European Union and U.S. government did not actively support Ukrainian efforts to negotiate direct gas purchases from Turkmenistan and Kazakhstan. Now, the contract concluded in January appears to commit Ukraine to purchase gas from Gazprom for the next 10 years.

On other key issues, negotiations for extending the Odessa-Brody pipeline to Poland have been stymied by domestic political infighting and a lack of commitment from Caspian oil suppliers. Ukraine continues to lack a firm policy regarding Russia’s South Stream gas pipeline project, which would circumvent Ukraine and weaken its role in gas transit to Europe. Western companies that wish to develop Ukrainian energy resources reportedly are informally required to link up with Ukrainian oligarchs, a distinct disincentive.

Relations with the West

Ukraine has achieved limited progress in moving closer to Western institutions due to political divisions within Ukraine coupled with the hesitation displayed by some European countries in offering firmer membership prospects.

Enhanced agreement with the European Union. The EU-Ukraine summit in September offered Kyiv an association agreement but fell short of Ukraine's hope for a more definite EU membership track. The agreement will not include language on a membership perspective, which has been typical in previous association agreements.

A decision was also made to begin work on a new instrument to replace the Ukrainian-EU Action Plan and allow for more practical cooperation. The March 2008 EU Joint Evaluation Report said negotiations on a free trade agreement between Ukraine and the European Union should be concluded in 2009, but that remains to be seen. During the September summit the two parties agreed to launch a "visa dialogue" to develop conditions for establishing a visa-free regime between the European Union and Ukraine.

Ukraine's CFSP engagement. Intensifying EU engagement with Ukraine should also entail Kyiv's closer involvement in the European Union's Common Foreign and Security Policy (CFSP) and crisis management planning. The September EU-Ukraine summit emphasized Ukraine's participation in EU-led crisis management operations through the new Framework Agreement and encouraged regular dialogue between the European Union's Military Committee and the Ukrainian armed forces' general headquarters.

Clarity on NATO relations. In terms of its political, economic, and military reforms, as well as its level of participation in joint military operations, Ukraine appears qualified for a NATO membership action plan (MAP). President Yushchenko and Prime Minister Tymoshenko requested a MAP in January 2008. The U.S. administration ultimately supported the Ukrainian request, but the full weight of American diplomacy did not engage on this until mid-March. In the end, opposition by some alliance members prevented Kyiv from gaining a MAP at the NATO summit in Bucharest in April.

Although the summit communiqué included language asserting that Ukraine would ultimately become a member, it offered no timetable. The country's prospects were not helped by divisions at the highest political levels in Kyiv and low public support for NATO membership. The NATO ministerial in December reaffirmed the statement made in Bucharest but concluded that Ukraine still had "significant work left to do" to qualify for a MAP. Decisions were made to enhance assistance to Kyiv in the framework of an annual national program and the NATO-Ukraine Commission, as the mechanisms to deepen NATO-Ukraine interaction, and to reinforce NATO's information and liaison offices in Ukraine.

In December, Washington and Kyiv signed a Charter on Strategic Partnership in which the Bush administration expressed its "vital interest" in an independent and democratic Ukraine and sought to "strengthen Ukraine's candidacy for NATO membership." The charter envisages U.S. support for increasing NATO-Ukraine military coordination.

Practical NATO-Ukraine programs. Regardless of the MAP process, NATO should expand its engagement and assistance programs in areas that will increase Ukraine's security. The alliance has helped Ukraine develop civil emergency planning and disaster response capabilities. Further collaborative programs could be undertaken in such areas as security sector reform, counterterrorism, and efforts to counter organized crime. These should be visible to the Ukrainian public so they can positively affect perceptions of NATO.

NATO information campaign. An effective informational campaign needs to be conducted in Ukraine to raise public knowledge about NATO. The advantages and obligations of alliance membership must be explained to dissipate the Cold War stereotypes that still persist in Ukrainian society. The government has approved a four-year "information campaign" to improve NATO's image in the country and has begun some efforts to explain the advantages of NATO membership. No full-scale campaign is apparent, however. Opinion polls indicate that support for membership remains low.

High-level U.S. engagement. President George W. Bush visited Ukraine in April 2008 and Vice President Dick Cheney was in Kyiv in September in a sign of high-level support for Ukraine in the midst of the Russia-Georgia crisis. President Bush met with President Yushchenko in Washington at the end of September. Shortly after the new U.S. administration took office, Vice President Joseph Biden met with Prime Minister Tymoshenko on the margins of the Munich security conference.

U.S.-Ukraine relations. With Ukraine entering the WTO and concluding a free trade agreement with the European Union, the U.S. government must seriously consider the merits of a bilateral U.S.-Ukrainian free trade agreement. Against the backdrop of the American presidential campaign and the global financial crisis, little progress was made in this area. Additionally, the U.S. government should broaden travel opportunities for Ukrainians to the United States by expanding exchange programs, particularly educational exchanges. No significant progress has been made on these questions.

The New Challenge Posed by Russia

The August 2008 conflict between Russia and Georgia demonstrated the new assertiveness of Russian foreign policy in its neighborhood. It also highlighted the urgency for Ukraine of actively resolving contentious political issues, strategically addressing the fundamentals of Ukraine's sovereignty and territorial integrity, and firmly setting the record straight on agreements and obligations between the two countries.

Russia's divergence from the path of European-style political pluralism, and its turn toward growing state control of key economic sectors and major TV outlets

has resulted in a predictable and very serious parallel turn from international norms and principles in its foreign policy. The Russian leadership clearly believes that its hold on power would be at risk if the country were to allow competitive, pluralistic political processes.

Ukraine's democracy presents a particular thorn in the side of Russia's current leadership and is thus a particular target of its foreign policy focus of undermining trends toward Europeanization in its neighborhood. The Orange Revolution posed a direct challenge to the Kremlin's claim that former Soviet states are not suited to European political institutions, the protection of civil and human rights, and the scrutinizing function of an independent media. Ukrainian trade and financial integration with Europe likewise directly challenges the nontransparent and corrupt business dealings that provide Russia's elite with not only wealth, but also influence beyond Russian borders.

The net assessment described Ukraine's achievements in its relations with Russia that established its sovereignty and territorial integrity, addressed areas of potential difference in cultural issues and language policy, and disentangled Ukraine's political and security institutions from Russia's. It warned of Ukraine's vulnerability to Russian attempts to limit its Euro-Atlantic course through nontransparent and potentially corrupt business relationships and economic ties.

The warning remains valid, primarily because of Ukraine's failure to reform its energy sector, the danger of which was sharply demonstrated once again in January. Full integration into a more diversified, global economy is within Ukraine's reach through its membership in the WTO and intensified negotiations with the European Union, including on a free trade arrangement.

Unfortunately, Ukraine's achievements may now be at some risk because of shifts in Russian foreign policy and the diminished importance Russia's leadership attaches to living by international rules and binding commitments. The "Statement of the Russian Ministry of Foreign Affairs on Russian-Ukrainian Relations" issued on September 11 implicitly called into question the 1997 Treaty on Friendship, Cooperation and Partnership between Ukraine and Russia by linking its renewal to Ukraine's criticism of Russian behavior in Georgia and to Ukraine's unwillingness to extend the basing agreement for the Russian Black Sea Fleet beyond its end date of 2017.

The Russian statement criticized Ukrainian officials for denying visas to Russian politicians seeking to enter Ukraine. It raised objections to Ukrainian discussion of the Holodomor, referring to efforts "to review in an anti-Russian spirit our common history and heroize the accomplices of fascism." For Ukrainians, the Holodomor was an act of genocide, and Ukraine has called on the Russian government to recognize it as such.

The Russian statement also claimed that the rights of Ukraine's Russian-speaking population were being infringed, with efforts to exclude Russian from education and the media. In these instances, the statement claimed, Ukraine was not meeting its obligations under the 1997 treaty. In the event, neither Russia nor Ukraine took action to block the treaty's renewal, so it was automatically renewed for a period of 10 years on October 1, but the tenor of the Russian Foreign Ministry's statement remains of concern.

Russia's shift in policy toward a more assertive role globally and toward what President Medvedev claimed as a region of "privileged interests" on its borders takes a very worrying form in the case of Russia's message to Ukraine, as does Russia's claim to the right to intervene in other countries to protect the interests of Russians. While much attention has focused on Russia's complaints and warnings about Ukraine and NATO, Russia's shift aims to call into question Ukraine's rights and status as a sovereign country, including Kyiv's right to decide its own geopolitical orientation.

Therefore, the United States and the European Union should continue to work on Ukraine's integration along the most important policy dimensions outlined in the net assessment. But a more fundamental commitment and deliberate attention to supporting Ukraine in maintaining its sovereignty, controlling its territory, and excluding Russian interference in its internal politics should become an explicit component of that integration strategy.

Euro-Atlantic support for documenting the facts on issues such as language usage policy, political developments in Crimea, as well as the specific naval base status and plans for the withdrawal of the Black Sea Fleet, will help to prevent distorted claims from achieving the status of legitimate complaints. As was seen with Georgia, leaving disputes to simmer away from Euro-Atlantic attention and from the clear light of diplomatic engagement grants Russia's leadership the advantage of initiative that can rapidly translate into changes in the accepted status quo. It is unlikely that violence would arise from the new turn in Russia-Ukraine relations following Russia's war with Georgia. But the dangers of a Russian political strategy to exploit frictions within Ukraine and to challenge Ukraine's sovereignty and territorial integrity are greater than one year ago.

Conclusion

As noted in the February 2008 net assessment, Ukraine has achieved much since it regained its independence in 1991. Unfortunately, the Ukrainian political leadership has not used the past year well to build on those achievements. The infighting and resulting political paralysis in Kyiv has stymied needed efforts to consolidate economic reforms; prevented Ukraine from taking the obvious steps to reform the vital energy sector; left Ukraine divided in the face of a more serious, and possibly threatening, challenge to its east; and undermined

Ukraine's ability to promote its integration into European and Euro-Atlantic structures.

This is first and foremost a failure of Ukraine's political leadership. The country's senior politicians—among them, President Yushchenko, Prime Minister Tymoshenko and Regions head Yanukovich—all too frequently put petty political squabbles above the national interest. In order for Ukraine to take full advantage of the opportunities and effectively confront the challenges before it today, its leaders must exercise responsible leadership, promote coherent governance, and at times seek compromise in order for Ukraine to become a viable and prosperous participant in Europe's quest for unity. The Ukrainian people deserve nothing less. If Ukraine's current leaders cannot do this, the Ukrainian people and Ukraine's friends in the West should begin looking to the next generation of politicians, in the hope that they will prove capable of providing the mature and responsible leadership that Ukraine needs in the twenty-first century.

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