



CEPS Neighbourhood Watch

Issue 1, February 2005

***Editors' Note:** This first number of the **CEPS Neighbourhood Watch** is taking over from the **CEPS South East Europe Monitor**, whose 61st and last number appeared in January 2005. This change is reflecting developments in the real world around us. South East Europe is bit by bit gradually becoming part of the EU with Bulgarian and Romanian accession now in the pipeline and negotiations expected to begin soon with Croatia. Meanwhile the EU has given birth to a new European Neighbourhood Policy (ENP), which embraces both the European CIS states and the Mediterranean partner states of the Barcelona process. There is a lot of action now in these neighbourhood states. CEPS has therefore decided, while maintaining the format and editorial policy of the **South East Europe Monitor**, to open up its content to the developments in the neighbourhood states as well as South East Europe.*

The editorial policy will continue to be to publish important documents (or extracts) regarding this geographic and political area, especially material relating to EU policy, and the policies of the partner states towards the EU; related analyses or reports coming from academic, think tank or NGO sources; and some of our own publications from CEPS research staff.

We welcome suggestions from readers for inclusion of suitable articles or documents. We hope this Neighbourhood Watch will become valued as a reliable and carefully selective information source and archive. Individual e-mail addresses may request to become regular subscribers, free of charge, and of course to unsubscribe at will.

*This first edition is entirely devoted to **Ukraine** in recognition of the exceptionally important developments there. It includes President Yushchenko's speech to the European Parliament on 23 February and extracts from the EU-Ukraine Action Plan adopted the same week by EU-Ukraine Cooperation Council that puts the Neighbourhood Policy into motion. Also included are the conclusions of this Cooperation Council meeting, whose Annex here reproduced contains the famous 'ten points' elaborated by High Representative Javier Solana and External Relations Commissioner Benita Ferrero-Waldner, in order to give a supplementary boost to the content of the Action Plan. Finally we reproduce extracts from a contribution by Ukrainian civil society enhancing the rule of law in Ukraine.*

Michael Emerson, Gergana Noutcheva, Marius Vahl

Viktor Yushchenko: "Ukraine's future is in the EU" **Address by President of Ukraine, European Parliament, 23.02.2005**

Parliament President Josep **BORRELL** welcomed the President of Ukraine, Viktor **YUSHCHENKO** to the Chamber, noting that the elections in his country had shown a shared democratic desire among Ukrainians, as well as a great maturity among the people and a desire for peace and progress. He said the impressive programme of political and economic reform President Yushchenko had put forward would not be easy to implement, but that it would have the support of the EU. He recalled Parliament's resolution on Ukraine, which had called for the Commission and Council to go beyond the present action plan and begin an association process

with Ukraine with a view to that country having the possibility of EU membership in the future.

President Yushchenko said it was a great honour and pleasure to be addressing the European Parliament, the symbol of democracy in the EU:

"Democracy is a value which unites us all. It is the cornerstone of our prosperity. I am also proud to be here representing a country which has built a new symbol on the European continent. After the fall of the Berlin Wall, we now also have the Orange revolution. This has shown that totalitarianism is no longer possible in

Europe. The people have chosen the path of freedom and truth.

The borders of Europe now stretch from the coast of Portugal to beyond Kiev. We have chosen Europe: it is not just a question of geography, but a matter of shared spiritual and moral values. We have seen the election of a second president, this time in a transparent and democratic manner. It was the development of a civil society which made our victory possible.

It is almost a new nation which has been born, and you in the European Parliament are its godparents. Your support was a great symbol and encouragement to us in our struggle in the difficult month of December. Here in the European Parliament we understood that a new democratic society was possible in the Ukraine. I want to thank you for your support in our struggle for freedom.

Ukraine still has much to do to become a full member of the European family, but we are all now united by values, history and aspirations. We have embarked on a path of reforms. Like making bread, you need the right ingredients and a lot of work. European integration is the only path open for Ukraine. It is time to move beyond words and take action to develop democracy, the rule of law, freedom of the media and to tackle corruption. We must not lose this unique opportunity to bring the EU and Ukraine closer.

It was visionary of the European Parliament to support Ukraine's European aspirations. We will do all we can to make the Action Plan work, and extending it was a positive gesture, but the neighbourhood policy has already been overtaken by events. We hope that at the end of the Action Plan, in 2007, we will be in a position to begin EU membership negotiations. Ukraine is already a part of an integrated Europe. We are able to make an application under Article 49 and will aim to meet the Copenhagen criteria.

We know that the largest part of the work needs to be done on our side. Without action from us, the EU's support will not help us. But we already have a plan of action for the next five years with

EU membership as our objective. We want a transparent economy, alleviation of taxes, less corruption and an independent media and judiciary. While I am President, no one will hear of human rights abuses in Ukraine. We also have much work to do to adapt our administration to European standards.

We have plans for important social reforms, for judicial reform, to tackle illegal immigration and the drugs trade. All these will be based on human rights and respect for the dignity of human beings. We aim to implement these changes meticulously and at all levels, doing all this within the European spirit. It is a European philosophy which underpins my work and that of the government.

Ukraine's definitive choice of Europe cannot be denied. Being part of the Atlantic alliance will further strengthen our civil society, rule of law and human rights. But we also want to deepen relations with the Russian Federation. Moving closer to Europe does not prevent closer cooperation with Russia. Ukraine's membership of the EU and NATO is not against Russian interests - on the contrary, a stable Ukraine could help bring Russia closer to Europe.

We have also developed a new regional policy, with our first action being to work for a peaceful resolution of the Transdnistria problem. We want to reach out with cross-border cooperation and development of energy networks to bring European standards into play from Baku to the western shores of the EU.

Nothing is guaranteed, we still need to develop values on a common basis. You need solid foundations or a house will collapse, and, as the Bible says, a house divided upon itself cannot stand. You have witnessed the emergence of a new colour - Orange - on the European map. You know Ukraine can be part of the future of Europe. Now is the time for concrete action. It will not be easy, but together we can achieve our common goal."

MEPs gave a standing ovation to the Ukrainian president.

EU-Ukraine Action Plan, 9 December 2004, Brussels

Full document available at

http://europa.eu.int/comm/world/enp/pdf/action_plans/Proposed_Action_Plan_EU-Ukraine.pdf

Priorities for Action

This Action Plan sets out a comprehensive set of priorities in areas within and beyond the scope of the Partnership and Cooperation Agreement. Among these priorities, all of which are important, particular attention should be given to:

- Further strengthening the stability and effectiveness of institutions guaranteeing democracy and the rule of law;
- Ensuring the democratic conduct of presidential (2004) and parliamentary (2006) elections in Ukraine in accordance with OSCE standards;
- Ensuring respect for the freedom of the media and freedom of expression;
- Develop possibilities for enhancing EU – Ukraine consultations on crisis management.
- Enhanced co-operation in the field of disarmament and non-proliferation;
- Enhanced co-operation in our common neighbourhood and regional security, in particular working towards a viable solution to the Transnistria conflict in Moldova, including addressing border issues;
- Accession to the WTO;
- Gradual removal of restrictions and non-tariff barriers that impede bilateral trade and implementation of the necessary regulatory reforms;
- Improving the investment climate, through non-discriminatory, transparent and predictable business conditions, simplified administrative procedures and by the fight against corruption;
- Tax reform, improved Tax Administration and sound management of Public Finances;
- Establishing a constructive dialogue on visa facilitation between the EU and Ukraine, with a view to preparing for future negotiations on a visa facilitation agreement, taking account of the need for progress on the ongoing negotiations for an EC-Ukraine readmission agreement.
- Gradual approximation of Ukrainian legislation, norms and standards with those of the European Union; further reinforcing administrative and judicial capacity;
- Encourage dialogue on employment issues and best endeavours, in accordance with the PCA, to ensure that treatment of migrant workers does not discriminate on grounds of nationality.
- Full implementation of the Memorandum of Understanding on the closure of the Chernobyl nuclear power plant, including completing and starting-up of the 'K2R4' nuclear reactors, in compliance with the internationally accepted nuclear safety standards;

Progress in meeting these priorities will be monitored in the bodies established by the Partnership and Cooperation Agreement.

EU-Ukraine Cooperation Council Eighth Meeting, Brussels, 21 February 2005, EU Press release (6428/05 (Presse 37))

At the special EU Ukraine Co-operation Council today, the EU welcomed the appointment of a new Government and expressed support for its ambitious programme of political and economic reforms. The EU acknowledged Ukraine's European ambitions and made clear that a new commitment to democracy and reforms opened new prospects for both Ukraine and EU-Ukraine relations.

The EU underlined its commitment to support Ukraine at this crucial moment. The Union

stressed that work on the EU-Ukraine Action Plan endorsed by the Co-operation Council should begin immediately and presented additional measures (annex) agreed earlier today by the Council in order to strengthen and enrich the Action Plan.

The EU was represented by Mr Asselborn, Minister for Foreign Affairs of Luxembourg, High Representative Solana, Commissioner Ferrero Waldner, and UK Minister for Europe Mac-

Shane. Deputy Prime Minister Rybachuk led the Ukrainian delegation.

Annex

In order to further strengthen and enrich the Action Plan, the following measures have been agreed in support of a democratic and reform-oriented Ukraine:

- To initiate early consultations on an enhanced agreement between EU and Ukraine, to replace the Partnership and Co-operation Agreement at the end of its initial ten-year period, as soon as the political priorities of the ENP Action Plan have been addressed.
- To explore possibilities for closer co-operation in the area of foreign and security policy, including European Security Defense Policy, and to address in particular issues of regional stability and enhanced co-operation in both crisis management and non proliferation. The EU is ready to intensify cooperation with Ukraine on the settlement process to solve the Transnistrian conflict in Moldova. Ukraine should be invited, on a case by case basis, to align itself with EU positions on regional and international issues.
- To deepen trade and economic relations between EU and Ukraine. Work on agreements for steel and textile products for 2005 will be intensified. The review of the existing feasibility study on establishing a Free Trade Area between Ukraine and the EU will be accelerated with a view to enable an early start of negotiations once Ukraine has joined the World Trade Organisation (WTO).
- To lend further support to Ukraine's WTO accession and to offer Ukraine continued assistance in meeting the necessary requirements.
- To grant 'Market Economy Status' to Ukraine, as soon as the limited remaining issues have been satisfactorily resolved. The EU will intensify contacts with Ukraine in order to resolve these issues.
- With regard to negotiations to be held between the EU and Ukraine before the next EU-Ukraine summit, options should be considered in which way and in which framework the granting of

visa may be facilitated while complying strictly with security requirements. In this context, progress in the ongoing negotiations on an EC-Ukraine readmission agreement will remain essential. The EU will continue to assist Ukraine in implementing the JHA Action Plan and the scoreboard.

- To enhance co-operation in key sectors, including energy, transport, environment and health as well as in private sector development. Preparations will be made for a high-level dialogue on energy and related issues and the environmental dialogue will be upgraded. Ukraine will be treated as a priority country in the ongoing preparations for the extension of Trans-European Networks.
- To step up support to the process of legislative approximation, including technical assistance and twinning to meet EU norms and standards and targeted advice and support legislative approximation through a mechanism such as TAIEX. Further efforts will be made to conclude bilateral agreements on the co-ordination of social security.
- To welcome and increase people-to-people contacts, including in the key areas of youth and education, through measures such as priority access to the Erasmus Mundus programme, reinforced participation in the Tempus programme, support to Ukraine's efforts to work towards convergence in higher education by participating in the Bologna process, considering the possibility of offering internships for young professionals, and continued support to independent media. Efforts in the field of democracy and rule of law will be an immediate imperative and further targeted assistance including support for the strengthening of civil society, is already envisaged.
- To maximise access to funding from the European Investment Bank (EIB). After final endorsement of the ENP Action Plan, up to €250 million of EIB lending could be made available to Ukraine.
- To provide increased assistance to Ukraine through the relevant instruments in order to help Ukraine to pursue the reform process.

**Strengthening EU-Ukraine co-operation towards enhancing the rule of law in Ukraine,
Excerpts from a Policy Paper
The International Renaissance Foundation (Ukraine) and the Open Society Institute - Brussels**

Background

The International Renaissance Foundation (Ukraine) and the Open Society Institute - Brussels launched the Rule of Law task force in July 2004. The initiative is aimed at preparing the policy paper that outlines major problems and steps to be taken by Ukraine and the European Union for effective cooperation toward enhancing the rule of law in Ukraine.

For this purpose a task force consisting of leading independent Ukrainian experts in the rule of law area was created. The topics analysed in the policy paper contain the following subjects:

- respect for human rights and fundamental freedoms;
- access to justice and justice reform;
- good governance, and
- legal education.

These proposals are based on the current legislation of Ukraine and do not take into consideration possible Constitutional changes that might enter into force as of September 2004. There is serious opposition in Ukraine to this change and the December 2004 parliamentary decision to amend the Constitution can still be recognized as unconstitutional.

The paper consists of the two blocks: the analytical part that identifies the needs to be addressed and the action plan that proposes measures to effectively address the needs. The actions proposed are designed for the 3-year period, which coincides with the duration for implementation of the EU-Ukraine Action Plan.

The proposals outlined in the paper are expected to help implement the EU-Ukraine Action Plan (its *Political Dialogue and Reform* part) that was adopted by the Council of the EU end of 2004. Our proposals can also serve as a basis for a separate Rule of Law Action Plan. The final product, the completed policy paper, will be delivered by an expert task force in March 2005.

Executive Summary

The adoption of the EU-Ukraine Action Plan

offers new opportunities for cooperation between the EU and Ukraine towards enhancing the rule of law and involvement of civil society in Ukraine. In the light of the recent political changes we can expect serious commitment on the part of the new Ukrainian government to advance reforms that would lead Ukraine to meeting political criteria of the EU.

In order to meet the objectives outlined in the Action Plan Ukraine has to take a number of legislative and institutional steps that would ensure for better protection of human rights, access to justice and good governance. In addition Ukraine would have to ensure high quality legal education to train generation of professionals able to implement the reform.

While the paper focuses more on Ukraine's homework, which is an objective need, it also suggests a number of activities to be undertaken by the EU. Those are standard activities that can be summarized as assistance to training/education, legal expertise (with the focus on experience of new EU member states) and better/more flexible funding opportunities to the third sector.

Current instruments within which the EU supports rule of law in Ukraine have little efficiency due to lack of coherence among them as well as to lack of conditionality embedded in them. Those are Partnership and Cooperation Agreement between the European Union and Ukraine, Justice and Home Affairs Action Plan, TACIS and the Joint European Commission and Council of Europe Framework Programmes. However, these instruments can still be used, provided there is better coordination among them. In addition new elements typical for pre-accession instruments need to be applied.

Human rights and fundamental freedoms

Key issues

- In the sphere of freedom of expression the Ukrainian legislation fails to meet the international standards: 1) lack of a requirement to disclose mass media owners denies media pluralism and effective anti-monopoly policies; 2) Ukraine has no independent regula-

tory authority in the broadcasting realm; 3) Ukraine lacks efficient legal mechanisms for accessing information held by government authorities and bodies of local self-government;

- Ukraine does not have laws safeguarding the exercise of the right to peaceful assembly. As a result courts tend to pass unsubstantiated decisions banning peaceful assemblies. Administrative practices are similarly restricting the right to assembly;
- Ukraine has no efficient criminal procedure laws as to investigation of instances of torture. Systemic and widespread torture is especially characteristic of the pre-trial investigation stage in the law enforcement bodies and in detention facilities, as well as in the armed forces. Standards of custody in detention facilities do not meet CPT standards;
- Arrests unwarranted by courts are a usual phenomenon. Unclear conditions of lawful police custody, law-embedded possibilities to go ahead without court decisions avoiding preliminary review of the grounds for detention, and absence of real liability for unlawful detention prompt the police to make arrests readily and without proper grounds. A big issue is access to defense lawyers and medics, which is often hurdled by the laws and administrative practice;
- The legislation fails to specify clear grounds for interception of information from communications channels (tapping of phones and mobiles, monitoring of electronic messages or web roamings), the duration of such actions, possible uses of information thus obtained and the circumstances when it has to be destroyed. According only to the official data last year the relevant authorities resorted to such measures over 40 thousand times;
- The nation has no proper laws on personal data protection that would determine grounds for and the procedure of such data collection, processing, protection, and use. Ukraine has no independent government authority to exercise appropriate control over collection, protection and use of personal data by the authorities.

Recommendations

- To ensure implementation of the standards of the European Convention for the protection of human rights and fundamental freedoms into the legal system of Ukraine;
- To create an environment for the existence of free and independent mass media and for independent journalism;
- To guarantee access to information held by government authorities and bodies of local self-government;
- To draft a law on conducting peaceful assemblies, with regard to the case law of the European Court of human rights, and to promote its adoption by the Parliament;
- To prevent torture, cruel, inhumane and degrading treatment;
- To prevent unlawful arrests and detentions;
- To grant protection of the right to privacy;
- To safeguard the exercise of the right to freedom of religion and to the neutrality of the state;
- To complete the reform of the laws on transition from the permissive system of residence registration to registration by notification;
- To eliminate discrimination on any ground such as race, color, nationality, religion, ethnic origin, language, age, or other.

Justice

Key issues

In spite of certain accomplishments in the course of the judicial reform, justice in Ukraine may not be deemed transparent and accessible. The numerous perceived issues are:

- The judiciary does not meet the needs of administration of justice and fails to observe sufficient procedural guarantees;
- Court rulings frequently remain unenforced;

- Safeguards of independence of judges and court experts and of the procedural independence of prosecutors and investigators are weak;
- The imperfect model of pre-trial investigation of criminal cases gives preference to secrecy and abridges the adversarial principles; evidence procedures and the judicial review system were poorly reformed;
- Prosecutorial bodies retain very broad authority often replicating the functions of courts.

Recommendations

- To introduce efficient mechanisms of assistance on the part of the state in covering court costs;
- To widely publicize texts of judicial rulings, with all safeguards of the right to privacy;
- To take legal and organizational measures to reduce courts' case loads;
- To make the state liable for damages inflicted to participants of the judicial process by unlawful actions or omission of authority on the part of courts or court staffs;
- To de-monopolize the judicial enforcement activities of the government;
- In the sphere of criminal justice, to ensure effective exercise of the right of detainees to defense;
- To abandon court practices of returning cases to prosecutors or for additional investigation; to introduce trials by jury;
- To bring the civil justice procedures closer to the European standards; to safeguard judicial independence by better funding of courts; to strengthen the role of judicial self-government; to institute transparent and competitive procedures of the selection of judges; to toughen the guarantees of non-interference of court presidents or the executive authorities with the administration of justice by judges; to initiate effective mechanisms of holding judges disciplinarily

liable; to deprive prosecutors of the authority to exert general oversight of law compliance and to conduct pre-trial investigation.

Good governance

Key issues

A key issue in Ukraine is the need to further reform and shape a new efficient system of public administration that would really care for the citizens.

In terms of the rule of law the principal concerns for the people are:

- Neglectful attitude to matters of individuals on the part of the authorities at large as well as of particular officials, coupled with delays, irresponsibility, broad discretionary powers, etc.;
- Limited access to public information and weakly instituted administrative liabilities.

Recommendations

- To institute and to fully respect the citizens' right to good governance, and to introduce statutory laws and binding regulations of the public administration procedures. This will require a speedy adoption of relevant legislation (on administrative procedure) envisaging standards recommended by the Council of Europe;
- To ensure the leading role of the government in the development and implementation of national policies;
- To complete the separation of political and administrative leadership in the bodies of executive power;
- To put into practice the principles of political neutrality and professionalism of public services;
- To empower local self-government and to widen its scope;
- To curb the government centralization tendency and to launch a policy of eventual decentralization, with an emphasis on vesting most of the possible public functions with bodies of local self-government.

Implementation of these tasks requires laws on bodies of executive power, an amended law on government service, on the administrative-territorial division, on local self-government (amended) and a number of other laws and regulations.

Legal education

Key issues

- Ukraine does not fully grant the right to accessible legal education of proper quality;
- The considerably misbalanced character of the legal education generates substantial problems with maintaining law and order within the society.

Recommendations

- To introduce mechanisms guaranteeing equal access of all strata of the population to legal education, to introduce mandatory testing, to improve the system of studentship loans for law schools, to considerably decrease the number of sectoral and departmental establishments of legal education; to review curricula by bringing them in harmony with the European standards;
- To promote the development of the Ukrainian law schools on the basis of self-government and the European University Charter requirements as to separation of

higher learning institutions from politics and religion;

- To make the professions of judge, prosecutor, and defense attorney open only to those who meet special requirements, to define balanced and well-founded criteria of performance assessment with an element of public involvement, to increase the role of these professions in making the society more democratic;
- To separate the legal profession from maintaining public order, investigative and detective activities, and performance of customs, taxation, and other administrative duties; to initiate safeguards against sectoral influences on the legal profession;
- To create a system of providing advanced training and retraining for judicial and prosecutorial staff and the defense attorneys on the basis of improving their understanding of the principles of freedom, justice, rule of law, based not on narrow departmental programs but upon universally accepted democratic values.

For a detailed policy paper and the proposed EU-Ukraine Action Plan towards Enhancing the Rule of Law in Ukraine please contact Iryna Solonenko at solonenko@irf.kiev.ua or Viorel Ursu at viorel.ursu@osi-eu.org.

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