

# INTERNATIONAL WEEKLY

№ 6,7,8

14.02.2012-05.03.2012



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# UKRAINE – THE EUROPEAN UNION

## Key theme analysis: *The Assessment of the European Commission and the European External Action Service on Ukraine's progress in Implementing the Action Plan on visa liberalization*

Local officials had high hopes for the results of the EU – Ukraine Summit on 19 December 2011 and were expecting that this would start “new” relations of the parties involved regarding the anticipated signature of the Association Agreement that is so greatly desired by Ukraine. Local officials significantly valued a positive assessment of Kyiv’s progress while executing the Action Plan on the EU visa liberalization for Ukraine contained in the Summit’s Joint Statement. It seems as though the “long-term” duration of a visa-free regime for Ukrainian citizens has been removed from the Association Agreement. Moreover, the Second progress report on Ukraine’s implementation of the 1<sup>st</sup> (legislative) phase of the Action Plan on visa liberalization was sent to the European Commission on 15 November 2011. According to the official assessment of Ukrainian officials however, only 80-85% of legislative work that is necessary to abolish the visa regime for Ukrainian citizens by the EU was actually performed as of January 2012. The transition to the 2<sup>nd</sup> (implementation) phase of the Action Plan is predicted to be made in 2012, only if the 1<sup>st</sup> phase of the document is successfully completed. The results of ***the Second Report of the European Commission and of the European External Action Service on the progress Ukraine makes implementing the Action Plan on visa liberalization of 9 February 2012 showed*** that the 1<sup>st</sup> phase is far from completion.

Even though this document contains a very reasonable and balanced assessment of the progress of Ukraine towards the implementation of all legal requirements in the field of visa liberalization, *the Report “does not represent an official position of the EC or other EU bodies”*. Accordingly, one can’t completely rely on its conclusions, though it is necessary to consider them in terms of Kyiv’s opportunities to implement the EU requirements.

The Report’s summary is classified under four categories:

- 1) document security, including biometrics;
- 2) irregular immigration, including readmission;
- 3) public order and security;
- 4) external relations and fundamental rights.

The report points to the “limited progress” in the first category because Ukraine “did not complete the legal framework for the issuing of machine-readable biometric international passports, in full compliance with the highest International Civil Aviation Authority (ICAO) standards”: in October 2011 the President of Ukraine vetoed the Law “On the documents that prove the personal identity and citizenship of Ukraine” which would have created the legal framework for the introduction of documents with the electronic chip containing biometric data, commenting that such permits violate fundamental human rights and greatly increase budget expenditures. European officials stated that the legal justification of the State Registration Service is a remarkable plus for Ukraine.

In commenting on Ukraine’s progress in the second category (issues of irregular immigration, including readmission), the EU institutions state that Ukraine “adopted all of the necessary laws and created the institutional framework” in the area of border management, but “requires more effort in strengthening inter-agency cooperation”. Moreover, Kyiv “adopted the legislative framework and established an institutional framework for migration management, and implemented the migration policy very quickly”. However, “it is necessary to take additional action (adoption of additional rules, by-laws and regulations)” in the sphere of emigrational management. There are some gaps in the development of the comprehensive National Migration Management Strategy.

According to the experts, “there is a solid legislative basis that is mostly in line with European and international standards, in the area of asylum”. However, the EC proposes that Ukrainian authorities pay attention to the insufficient development in health care for refugees and asylum seekers, and encourage the review of the legislation in this sphere.

The third category of the Report noted that Ukraine has adopted a legal framework on combating organised crime, including appropriate Strategy, but “needs the relevant Action Plan that should include a realistic timeframe, clearly identified responsible actors, a budget, human resources, performance indicators and a monitoring process covering all relevant stakeholders”. In addition, our government should revive the adoption of regulations in combating terrorism that meet international standards.

At the same time, the Report points to the “limited progress” in the fight against corruption. Overall, the adopted legislation remains incomplete and in some respects ambiguous, and still fails to fully comply with the requirements of the Council of Europe and UN. The National Anti-Corruption Strategy adopted in October 2011 “contains rather general directions for further action and does not tackle some of the key outstanding issues (such as the budgeting of the fight against corruption and the determination of the concrete spheres to overcome it). Ukraine also “has no corresponding Action Plan”, and the current legislation is quite abstract and unrelated to other sub-sectors of domestic law (according to GRECO – Group of States against corruption of the Council of Europe).

A significant first step was made regarding data protection, with the ratification of the 108th Council of Europe Convention and its Additional Protocol and the adoption of Ukraine’s first-ever “Data Protection Law” (of 1 June 2010). Nevertheless, Ukraine still needs to “improve the legal framework” and ensure the complete independence of the data protection supervisory authority that’s responsible for this area.

The fourth category concerns external relations and fundamental rights, the EU sees “some progress” especially with the adoption of several important amendments to the legislation aimed at removing unjustified obstacles to freedom of movement within Ukraine. However, the Report points to the need of “further legislative work” which is required in order to insert effective provisions on human rights and fundamental freedoms into national legislation. “The ratification by Ukraine of most of the relevant international conventions, and enshrining their values and principles in the Constitution, is not sufficient in itself” because the “effective implementation of those principles requires the adoption of special legislation, as well as the harmonisation of existing legislation with the provisions of ratified treaties and international conventions”.

The EU emphasizes that the Action Plan on visa liberalization is “an important tool for advancing reforms in the Justice and Home Affairs area and beyond” in the conclusion of the Report. Once Ukraine has provided the additional information and clarifications requested, including the necessary measures identified in the Second Progress Report, as well as the outstanding legislative and policy framework, the Commission and EEAS will prepare an updated report, as well as “a wider assessment of possible migratory and security impacts of future visa liberalisation for Ukrainian citizens travelling to the EU”. Building upon the conclusions of the updated report and of the “assessment of possible migratory and security impacts”, a decision will be made whether to initiate the assessment of the second set of benchmarks, in accordance with the VLAP methodology.

Essentially, there are a lot of shortcomings in the implementation of all the necessary EU criteria. However, Ukrainian officials emphasize that the report sees the results that Kyiv achieved in November 2011, and this is why a significant number of existing recommendations have already been implemented. In particular, the authorities adopted a State Program Preventing and Combating Corruption until 2015, and an Action Plan on Implementing the Concept of State Policy in the Fight against Organized Crime. Additionally, a National Program against Human Trafficking until 2015, and the regulations required for the proper implementation of the Laws of Ukraine “On refugees and persons who need the additional or temporary protection” and “On Legal Status of Foreigners and Stateless Persons” have also been completed. The preparation of legal framework for the introduction of documents with biometric data is also underway. A lot of work has been done, but the cancellation of European visas for Ukrainians is still out of reach. There is another phase of the Plan, which could be three times more difficult to carry out in practice. The Europeans could check our progress very easily, and they probably won’t be late with their inspections.

# UKRAINE – NATO

## *Key theme analysis: NATO and the Problem of the Transnistrian Settlement*

The problem of the recognition of the Transnistria or the clear identification of its status became very apparent to Chisinau when taking an increasingly active movement of the Moldavian Republic towards the European Union and most importantly, the mutual recognition of the validity of such intentions by the parties into account. Russia is not interested in the final settlement. Deploying its own contingents in the TMR territory, Moscow can affect not only the course of negotiations to resolve the situation in the unrecognized republic (even by Russia), but every new step of Moldova towards NATO or the EU and, consequently, has an influence upon all the peacemaking processes and actions of disarmament on the continent.

It is no surprise that this year on 4<sup>th</sup> March the 140,000 Russian citizens residing in the TMR were given the opportunity to vote for their candidates at the presidential elections in the RF. Moreover, the local authorities even agitated people to vote for Vladimir Putin. It's known that the latter actively supports the preservation of the Russian presence in the TMR and will absolutely not change the format of the peacemaking presence in the region, something that Chisinau has repeatedly been seeking. Encouraged with such intentions Tiraspol intends to join the Eurasian Union.

Accordingly, no significant steps were made towards the resolution of the current conflict in the Transnistria during ***the second round of formal consultations in the "5+2" format (Ukraine and Russia – guarantors of the settlement, the OSCE – the mediator, the EU and the US – observers + Moldova and the TMR – parties to the conflict) on the Transnistrian settlement on 28-29 February 2012 in Dublin***. Of course, if one notices that the official talks in the "5+2" format were restored on 30 November 2011 in Vilnius after almost a six-year break, one can say that the negotiations between the parties are picking up.

After his first meeting with the Prime Minister of Moldova Vladimir Filat in Odesa on 27 January 2012, the new President of the Transnistria Yevgeny Shevchuk, declared that Chisinau and Tiraspol had agreed not to discuss the political status of the Transnistria and to focus on solving social and economic problems of the people living on the right and left banks of the Dniester. Accordingly, the meeting in Dublin also concerned the continuation of work to restore full passenger and freight traffic on the Transnistrian section of the railway, as well as a telephone network in the TMR including fixed and mobile networks. Thus, the TMR proposed to unblock the transport rail connection through the Transnistrian territory, as well as to implement the basics of the guaranteed system in the process of the Transnistrian settlement.

The parties reached an agreement on the principle of fair realization of mutual arrangements by the parties involved. In addition, the Moldovian party agreed with the position of Tiraspol that all the prepared documentation is to be signed by the parties in an established order. Chisinau and Tiraspol will later take into account their earlier compromises in the developing agreement. According to the Transnistrian party, the usage of the existing groundwork in the long-standing negotiation process will improve the efficiency of the further work done in the "5+2" format.

The Moldavian party did not agree to fix the principle of equal rights in the negotiation process, despite the fact that the other participants approved this provision and considered it as fundamentally important in conducting a constructive dialogue. As a result, the parties could not agree to sign a document on the principles and procedures of negotiations: the discussion about this document will only continue during the next round of consultations in April. However, from now on the parties have to depend on each other when developing agreements.

At the same time, all of Moldova's attempts to discuss the principles of the change of the current location of peacemaking forces on the Dniester, implemented under the auspices of the Russian Federation, have been unsuccessful. The international civilian mission failed because neither Russia nor the TMR agreed to it. The statement was made largely due to the tragic incident that happened on the border of the TMR on 1 January 2012 when Russian peacemaking soldier mortally wounded an 18-year-old Moldavian.

However, in this case Moscow was also guided by a number of reasons not to even give the opportunity to discuss its right to control the left bank of the Dniester. Thus, on 17 February 2012 the parliament of Moldova adopted a draft law “On the order of actions against aircrafts that illegally use the Republic of Moldova’s airspace” in the first reading, that stipulates that the country will have to spent over 240 million USD for the purchase of military aircrafts and helicopters to ensure the safety of its airspace until 2015. According to Russian leaders, the crafts accompanying the deployment of Russian peacemakers in the region could easily become “undesirable” ones.

In fact, Moldova will directly work with NATO in the case of its militarization. The latter quite successfully implemented the Individual Partnership Action Plan NATO – Moldova. On 23 January 2012 a Canadian inspection group accompanied by servicemen from the National Army of the Republic of Moldova, started to test the military units and military objects on the territory that includes the Security Zone and a big part of the Transnistrian Moldavian Republic. The Joint Control Commission (JCC) did not agree with the Moldavian party and weren’t notified in time. Accordingly, the Ministry of Foreign Affairs of the TMR did not only express concern about the unilateral uncoordinated military inspections in the Security Zone but also noted that the inspectors of the NATO Member State had wanted to penetrate into the military objects unrelated to the peacemaking forces in the Transnistrian Moldavian Republic.

As it’s known, these military objects, in particular, the Russian arms depots in the village of Kolbasna, as well as the Transnistrian factories where weapons or weapon parts are produced, has attracted the attention of Western officers for a long time. Although these inspections are provided in the “5+2” format, the Transnistrian party firmly opposed them and argued that the stores are on Transnistrian territory. Thereby Tiraspol “covered” Moscow, which did not want any inspections in the former 14<sup>th</sup> Army depots, but it also couldn’t prevent them. Russia, as well as the Republic of Moldova, signed the Vienna Document of 1999 on confidence- and security-building measures that referred to the exchange of information on armed forces by the signatory countries. The Transnistria did not sign this document since it is an unrecognized state.

Moscow, however, did not keep their silence against a background of constant conflicts regarding the deployment of the European AMD. Condemning the actions of the Moldavian authorities, Russia emphasized that the peacemaking operation in the TMR is conducted in accordance with the Agreement on the principles of peaceful settlement of the Moldavian – Transnistrian conflict of 1992. The denunciation of this Agreement would violate the entire outline of the solution, and would be a very undesirable path towards development, that’s why new attempts to force the execution of the OSCE Istanbul Summit on the withdrawal of Russian troops from the Caucasus and the Transnistria can just “nullify” the likelihood to develop a new regime of control over the conventional arms in Europe.

In addition, the Security Zone, which has been covering a great part of the Transnistria since 1992 and where the joint peacemaking forces (of Russia, Moldova and the TMR) are deployed, is controlled by the JCC, whose decisions are made by consensus. All the problems in the Security Zone should be resolved only through its participation. Accordingly, the Alliance Commission’s entry into the territory of Transnistria directly contradicted existing agreements and violated the established regional security regime.

However, Europe, Ukraine, Moldova, and Russia understand that Chisinau’s actions involving the representatives of NATO Member States in the joint inspections violate, first of all, the interests of Moscow, but not of the TMR or its citizens. *As a result, there are constant “delays” in the negotiation process, a significant Russian influence in the region, the leveling of Ukraine’s position, and worst of all the possibility of the development of events in the TMR in an Ossetian scenario.*

# FOREIGN POLICY OF UKRAINE

## *Key theme analysis: The Head of the Russian State, Duma Sergei Naryshkin's visit to Kyiv at the Presentation of the Agenda of Putin's Ukrainian Policy*

The Ukrainian government seems to constantly prove its willingness to move towards the EU or, at the very least, to be involved in the EU's key initiatives, while having to beat off many RF "attacks" restraining the "post-Soviet fervour" concerning the territory of former Soviet republics. Especially now, when the current leaders dared to disagree with Kremlin plans. Moscow did not foresee this kind of resistance in the gas and integration issues. Moreover, Russia could not imagine that Ukraine would want to control the movement of the Black Sea Fleet or to refuse joining the Customs Union (CU) in 2012 after Russia triumphed in signing the "Kharkiv agreements", and when relations of a new format seemed to begin successfully in 2010. Accordingly, the return of the new/old President of the RF, Vladimir Putin, to the Kremlin cannot pass unnoticed by Ukraine. In accordance with all the prognoses, he will not ignore a single case of Kyiv's disobedience, and the political pressure created during his rule will be merciless.

***The Head of the Russian State Duma and a faithful ally to Mr. Putin, Sergei Naryshkin's working visit to Kyiv on 19-20 February 2012*** was significant, especially in light of the previously defined relations between the two countries. Everything has to now change: Ukraine will receive no bonuses. It was stated officially that the Russian speaker went to Ukraine in order to discuss the formation of the Interparliamentary Commission and its agenda for 2012 with his Ukrainian counterpart Volodymyr Lytvyn. However, the list of meetings was not only limited to the Head of Parliament. The Russian guest held talks with the President of Ukraine, the Prime Minister and the Secretary of the NSDC.

Despite the attempts to create a bright picture of relations between Kyiv and Moscow, Naryshkin's visit to Ukraine produced ambiguous results. The Ukrainian party has begun frequently "contradicting" its "elder brother". Thus, the Russian speaker had said that the State Duma and the Verkhovna Rada of Ukraine are simultaneously ratifying the Free Trade Agreement within the CIS Member States signed in St. Petersburg on 18 October 2011. However, it later turned out, the Ukrainian Parliament is not ready to implement the Agreement on a free trade within the CIS.

Technical regulations and standards should be harmonized in order to have a positive economic effect of a free trade zone within the CIS. Naryshkin suggested focusing on the unification of technical regulations in industries of most intensive trade between the countries. These include, firstly, the sale of energy resources, steel products and agricultural goods. One can see the regulation of prices for gas again, and the regulation of Ukrainian cheese product and sugar supply to Russia, for which appropriate restrictions exist in the CIS. But there are no such restrictions within the Customs Union and technical regulations are also in place within the CU.

Thus, according to Mr. Naryshkin's logic, while Kyiv refuses this great opportunity to join the new group, it will only export cheese to the RF when its value is reduced by 30% (by the way, the Ukrainian MFA has already found a new buyer for dairy products in Jordan). The record price of 560 USD per thousand cubic metres of gas that Ukrainian industrialists are currently paying Russia's "Gazprom", can only be changed after Ukraine accepts the CU conditions. Therefore, cooperation in the "3+1" format that stipulates that Ukraine will study and consider the agreements signed within the Customs Union, and agrees to those of them that do not contradict the WTO principles, does not satisfy Moscow in any way.

The price of gas will be the same as for Russian consumers only when Ukraine enters the Customs Union. That's why, the announced "new contract" allegedly brought to Ukraine by the State Duma speaker, only theoretically provides better conditions for Ukrainian gas consumers as Russia offers a 10% discount on hydrocarbons to the majority of European consumers while trying to get support to start up the "South Stream". Moreover, Russia recently lost a 20 billion USD contract with China, so they are now trying to agree on funding with Europe. The latter doesn't refuse to buy liquefied gas, for example, from Qatar, which ruins Moscow's tranquillity.

*Ukraine is expected to make great concessions to receive a mere 10% discount:* Russia is still insisting on sole control over the Ukrainian gas transportation system, which is forbidden

by Ukrainian Law “On the Pipeline Transport” as of 15 May 1996, and only in exchange for Ukraine’s commitment not to reduce the purchases to 27 billion cubic metres in 2012 instead of planned 33 billion cubic metres. “Gazprom” offers a discount that’s standard for the European market only if these conditions are met.

The claims about Ukraine’s unauthorized intake of gas in cold February are also empty. The domestic GTS was built in the Soviet Union in such a way that it integrates the functions of the internal supply of gas and its transit to other countries, that is why the Russian party now in crisis mode, unfortunately speculates about the Ukrainian system. But in reality all this is caused by the desire to put political pressure on Ukraine during the current gas price negotiations that is currently a major focus in these relations.

Mr. Naryshkin’s visit to Kyiv only laid the foundation of future relations with Ukraine. After becoming president for the third time, Vladimir Putin has to use any possible influence on neighbouring countries, and the best thing for this is to have reliable information on the attitude of “potential allies” towards a possible scenario of “joining forces” in the former Soviet Union region.

