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## UKRAINE – THE EUROPEAN UNION



### **KEY THEME ANALYSIS: The future of the Association Agreement with the EU, and of the Agreement on a Free Trade Area Depends On the Implementation by Ukraine of the European Court Decision**

On the eve of the parliamentary elections in Ukraine and against a background of not just a suspension but of a prolonged pause in the process of EU – Ukraine relations, the EU officials repeatedly “expressed regret” about the fact that the situation in Ukraine would prevent “two important leaders of the opposition” from participating in the elections because *the Joint Statement of the EU High Representative for Foreign Affairs and Security Policy Catherine Ashton and the European Commissioner for Enlargement and European Neighbourhood Policy Štefan Füle on the decision of the High Court of Ukraine for Civil and Criminal Proceedings in the case of Yulia Tymoshenko on 29 August 2012* again concerned the democratic level of Ukrainian justice and the transparency of the upcoming parliamentary elections. This declaration clearly expressed the position of the European Union, which “regrets that the consequences of the current situation will prevent the participation of two important leaders of the opposition in the parliamentary elections”. Therefore, it once again stressed the importance for the Ukrainian authorities of eliminating the consequences of selective justice.

However, taking into account the “inflexibility” of the Supreme Administrative Court of Ukraine (SACU), which on 6 September 2012 left in force the decision of the court of first instance on the denial to the United Opposition “Fatherland” of meeting the requirements to put to the ballot for voting by party lists at the next parliamentary elections the names of the ex-Prime Minister Yulia Tymoshenko and the former Minister for the Interior Yuriy Lutsenko, as well as sentencing the latter on 17 August 2012 and the continuation of the hearings in the other case against Yulia Tymoshenko – as for the activity of the corporation “United Energy Systems of Ukraine”, – it is more obvious that Kyiv prefers to appear “steadfast and consistent” inside the country than to be following European standards. Accordingly, the case of Yulia Tymoshenko has long ago become one of the main conditions of restoring relations between Ukraine and its Western partners.

However, the President of Ukraine Viktor Yanukovich stressed that our country remains faithful to its European choice in the foreign political plane because it confidently paves the way for construction of a modern European state. But Ukraine will never accept integration “at any price”: due to the loss of its independence, economic or territorial concessions, and the permission to intervene in internal affairs. So, it is not strange that in the same speech the Ukrainian Guarantor reiterated the importance of maintaining stable friendly relations with the CIS countries, in particular, with Russia “because they have the largest market for Ukrainian producers”.

Thus, as one knows, it only becomes the largest one because the Ukrainian authorities don't allow "interference in internal affairs", as well as not being able to legitimately resolve the case of Yulia Tymoshenko. Accordingly, the only action is to close the door for the EU, or the EU would rather close the door for Ukraine.

And such a process is actively developing in all the areas of foreign policy cooperation. One shouldn't forget that even such a "desirable partner" as Russia (not to mention the representatives of international politics from the other countries) doesn't openly accept "the logic" of the decisions in the court case of the Ukrainian ex-officials. Thus, immediately after blocking of the participation of the imprisoned oppositionists in the elections not only the EU, but also Canada and the UK confirmed that they will continue putting pressure on Ukraine to eliminate selective justice and ensure that the opposition would be able to participate in free and fair parliamentary elections in October. The USA considers that the pre-trial arrest of Yuriy Lutsenko immediately implies the guilt of the suspect and directly contradicts the constitutionally guaranteed presumption of innocence.

Thus, today many leading politicians in Europe and the world are questioning the electoral process in Ukraine, as well as the results of the parliamentary elections to be held on 28 October 2012 because the opposition leaders do not have the opportunity to participate in them. There are also issues concerning the legal framework of the legislation that has been developed for the elections.

*So, the consideration of the complaint of Yulia Tymoshenko in the European Court of Human Rights (ECHR) currently remains the only hope for the Europeans, because this Court has to sort out the breaches of domestic justice on those articles of the European Convention on Human Rights concerning the ill-treatment, unlawful arrest and detention, political persecution and interference in private life. Moreover, it will also consider the most important thing: whether there is the right to a fair trial in Ukraine (according to Article 6 of the Convention). This consideration and, as a result, the further implementation of the ECHR decision will ultimately determine the future of the Association Agreement with the EU, the Agreement on a Free Trade Area and, accordingly, the future of the European perspective of our state.*

## UKRAINE – NATO



### **KEY THEME ANALYSIS: Disposal of Obsolete Ammunition As a Sphere of** **Ukraine – NATO Mutual Interests**

In spite of the “pragmatism” of Ukraine – NATO relations and the continual emphasis on the non-block status of our state, the content of these bilateral relations is firmly fixed at the documentary level that has allowed the parties to maintain their balance and fulfill the minimum of the necessary tasks of cooperation for two and a half years. Among all the existing fields of interaction one can easily follow the progress in the sphere of arms disposal because it can be measured by the amount of funds allocated for this and with the volume of utilized ammunition.

Thus, according to the Annual National Programme for Ukraine – NATO Cooperation in 2012, approved by the Decree of the President of Ukraine № 273/2012 of 19 April 2012, the volume of excess and obsolete ammunition and melange to be disposed of during 2012 amounts to 400 thousand and 8 thousand tons respectively. Though, according to the State Target Defence Programme on Disposal of Conventional Ammunition Unsuitable for Further Usage and Storage for 2008-2017 (approved by the Decision of the Cabinet of Ministers of Ukraine № 940 of 22 October 2008) during 2012 only 82.1 tonnes of excess and obsolete ammunition is to be disposed of, and the state should allocate UAH 730.2 million for this: UAH 712.5 million should be allocated from the state budget and UAH 17.7 million – from the other sources. Forgetting about the “discrepancy” of the quantitative content of the utilization programme, the Government of Ukraine decided to dispose of 366 thousand small arms from the Armed Forces reserves. Therefore, the Cabinet of Ministers “agreed” with the proposal of the Ministry of Defence to dispose of the small arms within the framework of the Implementation Agreement between the Cabinet of Ministers of Ukraine and the NATO Maintenance and Supply Agency (NAMSA) on the disposal of small arms and light weapons, conventional ammunition and antipersonnel mines PFM-1 ratified with the Law of Ukraine № 4338-VI of 13 January 2012. In particular, it was decided to dispose of submachine guns AKS-74, AKM, AK-74, pistols TT, PM, revolvers, machine guns RPK, grenade launchers, rifles, and carbines. In general, the residual value of these weapons is UAH 161.566838 million.

Thus, *in 2012 NATO foresaw UAH 15.7 million within the Trust NATO/PfP Fund for the disposal of ammunition.* In fact, in this situation NATO acted as the “other source” of funding for the disposal of Ukrainian arms. However, only UAH 44 million 580 thousand were transferred to the Special Fund of the State Budget of Ukraine after the sale of products of missiles and ammunition disposal in 2012. It is too little in comparison with the calculated amount. So, now one can define only few advantages of cooperation with the Alliance in the sphere of ammunition disposal.

*Firstly*, this procedure of collaboration allows our state to maintain a more or less steady rate of relations with NATO which has long ago started to move away from Kyiv and

refrain from closer interactions with our state because now the latter does not even seek to defend its pro-Western course and, moreover, to insist on its commitment to cooperation with NATO.

**Secondly**, if Ukraine disposes of the ammunition together with NATO, it receives the opportunity not only to get additional funds to finance this process, but also to provide the collectives of enterprises, directly involved in it, with the work. On 7 July 2012 within the framework of the budget programmes of the Ministry of Defence of Ukraine servicemen began to dispose of the rocket missiles at the Petrovsky chemical public association which is a part of the state concern “Ukroboronprom”. By the end of the year this company plans to dispose of 84 883 splinter and high-explosive rocket missiles for a total amount of about UAH 29 million.

**Thirdly**, these programmes enable our state to perform current international agreements and its obligations prescribed by different legal arrangements and multilateral instruments. Thus, at the beginning of 2011 the Norwegian Government decided to provide Ukraine with humanitarian assistance totalling USD 1 million to dispose of antipersonnel mines within the framework of the fulfillment of the UN Ottawa Convention (which our country joined in 1999). Today the arsenal of the Armed Forces of Ukraine accounts for about 6 million PFM-1 to be disposed of. Accordingly, the Pavlograd chemical plant in the Dnipropetrovsk region of Ukraine has put into exploitation the heat treatment furnace for utilization of the antipersonnel mines PFM-1 under the UN Ottawa Convention. On 26 August 2011 there was the demonstrative utilization of antipersonnel mines on the new equipment with the participation of the officials from the State Space Agency of Ukraine (SSAU), representatives of the Ministry of Foreign Affairs of Ukraine and the Embassy of Norway, the Geneva International Centre for Humanitarian Demining, and NAMSA. The capacities created at the plant allow disposal of 1.1 million pieces of ammunition per year.

*So, in fact, in this case Ukraine has strong support from NATO. However, despite this one can confidently talk about the limitedness of such assistance owing to the lack of political dialogue between the two parties.*

## FOREIGN POLICY OF UKRAINE



### **KEY THEME ANALYSIS: Ukraine faces the next change of its foreign policy vector**

While suffering a political removal from the EU and a total ‘narrowing’ of the political corridor, which could have brought Ukraine into the wider international arena, our nation faces a harsh reality, bringing it to the severe 1990s, when its foreign policy priorities teetered on the edge of its foreign partners’ benefits. Not understanding the European Union requirements, or rather, not wanting to implement them, the national government perceives the West as a problem rather than a partner. Thus, Kyiv is more and more often demonstrating a political bias towards the East. To put it more precisely, towards Russia. In fact, it once again has been proved by the meeting of the presidents of Ukraine and Russia Viktor Yanukovich and Vladimir Putin on 25 August 2012 during Yanukovich’s official visit to Sochi.

*Firstly*, announcements of the upcoming meeting have appeared in Ukrainian mass media only on the eve of the event itself. *Secondly*, still nobody is aware of the agenda of the meeting. As for the results achieved, their content is still a ‘state secret’.

Thus, during the meeting it was announced Ukraine’s desire to join the Shanghai Cooperation Organization (SCO), in which our state, supposedly, would like to obtain observer status to be able to participate in the integration processes occurring within the organization. However, despite the fact that this organization was founded in 2001 as a solely borderline group and is actually irrelevant to Ukraine, the Russian president said that for Kyiv it is really important today to enter the group in order to use the actively developing Asian market for distribution of Ukrainian goods. Moreover, he even promised to his Ukrainian counterpart to inform him about the progress at the APEC Summit (held in Vladivostok on 2-9 September 2012) and even to try to find a form for Ukraine’s observation in this important association.

Another Asian vector has already become more traditional. It was stated that Ukraine wants to enter the markets of the Asian region with its high-tech products produced in consort with Russia, as its production is an important component of economic growth. In this sense, the main markets of the third countries Kyiv and Moscow could possibly ‘work together for’ are, primarily, the CIS markets. Indeed, Ukrainian exports are being reoriented towards the closest northern neighbor’s markets, reducing its supplies to the West. Thus, the volume of exports of Ukrainian goods and services to the CIS countries in the first half of 2012 compared to the same period has increased by 2.1%, up to 15.3 billion US dollars, while Ukrainian exports to the EU countries during the same period, to the contrary, have fallen by 10.1% and amounted to 9.96 billion dollars.

Given that on 30 July 2012 the Parliament of Ukraine has ratified the CIS free trade zone treaty, having already been signed on 18 October 2011 (with only Belarus and Russia among all the countries’ signatories to have signed the document), in March 2012 the President of Ukraine Viktor Yanukovich noted that he was ‘examining’ the EurAsEC, and if it proved to be beneficial, in the case of amendments to the Constitution passed or the national referendum for joining cast a positive vote, a radical change of the recently pro-Western course of our state would not seem sudden any more. It would be a rather consistent one. On 27 August 2012



(without signing any documents and failing to receive any provisional promises) the Minister of Economic Development and Trade of Ukraine Petro Poroshenko has signed on behalf of Ukraine a memorandum of trade cooperation with the Eurasian Economic Community, which is a permanent regulatory body of the Customs Union between Russia, Belarus and Kazakhstan. The purpose is intensification of economic relations with these countries. In addition, Ukraine, Russia and Belarus intend to introduce a mechanism for resolving trade disputes emerging within the CIS and mediated by expert commissions.

This mechanism would supposedly be not only cheaper, but also faster than that of Geneva (where the WTO dispute resolution body is located), when a solution to a dispute takes at least one year after its filing. On the one hand, this procedure actually accelerates consideration of foreign economy disputes and enables companies to get rid of the cumbersome and time consuming procedures of handling disputes. However, on the other hand, it claims replacement of alternative trade dispute resolving mechanisms, being used in case of trade disputes emerging between WTO member countries. And, despite the fact that on 22 August 2012 Russia has officially become the 156th full member of the WTO, such a turn of events can only be ascribed to Moscow's desire to evade consideration of any disputes by the truly impartial WTO body, as it is not the fact that a newly created mechanism within the CIS will be completely impartial.

If to consider another scenario, one can assume that Russia is merely trying not to make public to the wider world their own political and economic combinations (most of which, by the way, are conducted between Ukraine and other CIS member states), because in case of legal consideration of any disputes within the WTO, Russia will be a permanent 'target' of the international community. Being a member of the WTO, unlike the CIS situation, Russia is not able to dictate to anybody its own rules, as it has to strictly follow the WTO requirements.

The Kremlin had to face this dilemma right after joining the organization. Using the WTO's Russian Federation membership, the European Union decided to check Russian Gazprom's compliance with EU antimonopoly requirements. If any violations in forming the Russian gas price were discovered, the Russian company would suffer substantial fines, but, above all, it would suffer a blow to the image of the company's business, which may cause a fall in its shares and reluctance of Europe.

And it is a situation when Ukraine could successfully use its own position, because during the Presidents' meeting a so-called 'gas issue' was repeatedly put in the middle distance, and Ukraine has once again heard that there are no reasons for revising the 2009 gas agreements. If Russian gas prices to Europeans were revised, Ukraine could possibly get a discount, amounting additionally to a minimum \$100 per thousand cubic meters. Moreover, this winter our country is preparing to significantly reduce heating companies' gas consumption through their partial conversion to coal consumption as well as to increasing its natural gas production in the near future.

However, implementation of these plans still lacks adequate political will. For now, the more pressure from Russia is felt, the more powerfully Kyiv is inclined to join multilateral integration unions - the Customs Union (CU), the Single Economic Space (SES) and a future Eurasian Union. After all, in terms of Russia the only opportunity of getting a discount on Russian gas for Ukraine is to enter the abovementioned structures, and, actually, to lose its sovereignty.

So, in fact, the international isolation Yanukovich's regime is suffering due to its anti-democratic domestic politics makes Ukraine vulnerable to external pressure. But instead of drawing conclusions and looking for new solutions, the Ukrainian government through their actions and statements is only confirming its rejection of European integration and reorientation towards the Asian path of integration and is likely to continue to naively hope for the success of the 'blackmailing' of European Union officials.