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UKRAINE – THE EUROPEAN UNION



KEY THEME ANALYSIS

THE EU-UKRAINE ASSOCIATION AGREEMENT WAS RATIFIED ON TERMS COMFORTABLE FOR RUSSIA

On September 16 2014 the ratification of the Association Agreement (AA) and the DCFTA between Ukraine and the European Union took place simultaneously in Kyiv and Brussels. However, the importance of this event was largely disregarded, because four days earlier Ukraine and the EU had decided to make concessions to Russia and to postpone until 2016 the coming into effect of the free trade area provisions of the AA, which constitute 4/5 of the AA text. The rest of the AA text mostly consists of political declarations which do not have much practical significance without the implementation of the DCFTA.

Besides the postponing of the DCFTA, Kyiv has ‘paid’ for Moscow’s ‘permission’ for the AA ratification by voting for the law which grants special status to the territories of the Donetsk and Luhansk regions occupied by Russian separatists. The relevant law, together with the law granting amnesty to the separatists, was voted on a few minutes before the ratification of the AA, and was probably part of the new ‘European integration’ package.

It is likely that the European capitals, especially Berlin and Paris, insisted on such a scenario. The unilateral preferences allegedly granted to Kyiv by the prolongation to 2016 of zero tariffs for Ukrainian exports to the EU will not bring many benefits to Ukrainian manufactures due to the unresolved issues of non compliance of their production with European standards and certificates. At the same time, the processes of standardization and certification are inhibited because the stimulus for their implementation, namely the DCFTA provisions of the AA, do not enter into force. Russia insists on the postponement of the implementation of EU standards in Ukraine. Therefore it is doubtful that Kyiv will move forward much in that direction until 2016.

Kyiv’s and Brussels’ decision to succumb to Moscow’s pressure convinces the Kremlin that its ‘force diplomacy’, backed by the ‘green men’ on the armored fighting vehicles, works. So one should not be surprised if in 2015 Moscow continues using force to persuade Kyiv and Brussels to agree to so many applications, exceptions and limitations to the Association Agreement and DCFTA that even after 2016 it will not allow the start of the fully-fledged integration of Ukraine into the European market.

Russia's offer to amend the Ukraine-EU AA¹ includes an extremely wide range of issues in the areas of customs administration, tariff reductions, technical regulations, sanitary and phytosanitary measures, and energy. Moscow wants to exempt 20% of goods from the scope of the DCFTA, while Russia sells these goods to Ukraine with zero duty under the FTA treaty in the frameworks of the CIS. Moscow also wants to supplement the AA with the provision that the AA does not prevent Kyiv from signing similar agreements with other intergovernmental organizations. De-facto **it is about Moscow's plans to involve Ukraine in the Customs and Eurasian Unions in future, if authorities more loyal to Russia come to power in Kyiv. It is important to the Kremlin to prevent the codification of Ukraine's European integration course because of Moscow hopes of 'reversing' it in the future.** The impossibility of amending the text of the AA doesn't stop the Kremlin, because all its requirements may be attached to the AA as the applications or as specific agreements (maybe trilateral), which can be signed before the entry of the DCFTA into force.

Kyiv should keep in mind that in 2015 its negotiating position on the DCFTA issue will be worse than now for the following reasons:

1) Today Ukraine is favored by most key figures of the European Union (European Commission President Jose Manuel Barroso, President of the European Parliament Martin Schulz, European Commissioners Stefan Füle and Catherine Ashton), but **the new composition of the European Commission will be dominated by politicians who are skeptical to Ukraine and prefer the development of economic relations with Russia instead.** The new President of the European Commission Jean-Claude Juncker (from Luxembourg) will start to exercise his powers on November 1, and has already said that in the next 5 years the EU will not accept new members. He even wanted to abolish the position of the European Commissioner for Enlargement and European Neighbourhood Policy, but then appointed to this post the Austrian politician Johannes Hahn, known as an opponent to sanctions against Russia. The new High Representative of the Union for Foreign Affairs and Security Policy is Federica Mogherini (Italy), known for her support for Gazprom's 'South Stream' project. Therefore Kyiv should not expect that the EU will actively defend its position in the negotiations with Moscow. It is unlikely that even the new President of the European Council Donald Tusk will manage to improve the situation.

2) **The longer economic sanctions against Russia work, the more European business puts pressure on their governments, demanding to resolve the Ukrainian issues more quickly** and to resume full-scale trade with Russia. The Ukrainian market is smaller and poorer than the Russian one, and many European capitals care more about profits than about the 'European values' they declare. Therefore, they will put pressure on Kyiv, demanding them to make concessions to Moscow and sign any 'peace' agreement which will provide the formal excuse to call off the sanctions.

3) **The effect of 'fatigue' with Ukraine will become stronger**, and European officials will agree to make more concessions to Moscow to 'close' somehow the Ukrainian issue. The attention of the European media (and therefore of the public) will gradually switch to other topics, and then the room for maneuver will increase for Russia. Such a situation already occurred during the presidency of Viktor Yushchenko, and there is no reason to believe that this time things will go better.

On September 12, at the 'YES' summit, the President of Ukraine **Petro Poroshenko** said that *"we need to be as flexible as possible concerning the Association Agreement, in order to do everything possible to preserve the opportunities which we get within the*

¹ Предложения российской стороны по внесению поправок Соглашения об ассоциации между ЕС и государствами - членами ЕС с одной стороны и Украиной с другой стороны в целях минимизации рисков, возникающих от вступления в силу указанного соглашения. - http://zn.ua/static/file/russian_proposal.pdf.

Association, and at the same time to make it **comfortable for Russia**”.² Such flexibility of Ukraine and of the EU was accurately assessed by the head of the Ukrainian department at ‘Deutsche Welle’ **Bernd Johann**. In his article ‘Kyiv and Brussels bend under Russian pressure’ Mr. Johann rightly noted: **“If to take into account all the Russian amendments to the Association Agreement, then probably little will remain from it. Adaptation of Ukraine to the European standards was to become the stimulus for economic reforms, which the country badly needs. But this stimulus is lost if the process is put on the back burner.”**³

² Ялтинська Європейська Сім’я. - <http://www.eurointegration.com.ua/articles/2014/09/13/7025980>.

³ Коментарій: Київ і Брюссель прогнулись під тиском Росії. - <http://www.dw.de/коментарий-киев-и-брюссель-прогнулись-под-давлением-россии/a-17919913>.

UKRAINE – NATO



KEY THEME ANALYSIS

WALES SUMMIT GAVE NO ANSWER TO THE QUESTION OF WHETHER THE ALLIANCE IS ABLE TO PROTECT ITS MEMBERS

The results of the Wales NATO Summit of September 4-5 2014 were disappointing for those who expected that the Alliance will demonstrate a strong willingness to defend its Eastern European members against possible Russian aggression. **The 'old' European Members did not dare to revise the Russia-NATO Founding Act** and didn't agree to create new military bases in Poland, Romania and the Baltic states, as well as to create the missile defense system, which could protect these countries from Russia.

The Readiness Action Plan to strengthen the Alliance's collective defense, approved in Wales, really does not envisage any major changes. Instead of permanent military bases, **it was decided to establish weapons warehouses in Poland, Romania and the Baltic States as well as some other infrastructure**, which might allow the quick deployment of the NATO rapid reaction forces. Ironically, the Eastern European NATO members were refused the establishment of permanent military bases by those countries which had been rescued previously from potential Soviet invasion by the establishment of American military bases. Primarily, we are talking about Germany. It is a rhetorical question whether West Germany could have been protected just by weapons warehouses in the times of the Cold War. Some new Allies, such as Czech Republic, Slovakia and Hungary, show the intention to enjoy the finer things of being a NATO member without making a significant contribution to the common security of the Alliance. They enjoy security under the NATO shield, but deny a similar right to protection of the other countries of the region. **The Prime Minister of Slovakia Robert Fico told the 'Nový Čas' newspaper that he is against Ukraine's accession to NATO; he also declared the unwillingness to fulfill the ally's obligations:** "It is wrong if someone wants to engage a small country like Slovakia into a large geopolitical clash. Although we are a member of NATO, it does not mean that we should give our land to foreign troops."⁴

In Wales it was decided to create new NATO rapid reaction forces, consisting of ten thousand persons (the corresponding agreement was signed by Britain, Denmark, the Netherlands, Norway, Latvia, Lithuania and Estonia). But, *firstly*, the creation of such forces will take time, while the Russian Foreign Ministry already

⁴ Premiér Fico otvorene o konflikte Ruska a Ukrajiny: Slováci sú obeťou propagandy! - <http://www.cas.sk/clanok/293296/premier-fico-otvorene-o-konflikte-ruska-a-ukrajiny-slovaci-su-obetou-propagandy.html>.

claims the need to 'protect' Russian-speakers in Latvia and Estonia⁵ (let's recall that under this pretext Russia began its aggression in Crimea and Donbas). *Secondly*, ten thousand soldiers are unlikely to be effective against the dozens of thousands of potential 'militants' in the Baltic countries (Russian-speaking residents without citizenship), whom Russia may arm for the 'uprising'.

Another summit decision was to boost the NATO members' defense expenses to 2% of GDP. This decision only duplicates the obligation, taken by the Allies previously and systematically ignored by them. And there is no mechanism to force the Allies to fulfill similar obligations now. The Allies also agreed **to enhance intelligence sharing, to improve defense plans and to conduct more joint exercises.**

NATO did not dare to propose a Membership Action Plan for Georgia. A package of additional measures to facilitate preparation for membership was offered instead, but it doesn't officially envisage membership as a goal. Instead, the Allies agreed that at the latest in 2015 they should make a decision on the invitation of Montenegro, which surely wouldn't strengthen NATO and which is known for the deep penetration of Russian capital into its economy and politics.

Petro Poroshenko, who led the Ukrainian delegation at the NATO summit, thanked the Allies "for very powerful support, including financial support, declared by them today after taking the obligation to contribute to 4 trust funds devoted to crucially important spheres of Ukrainian security."⁶ However, it seemed to be courtesy words in advance, because **during the summit the Allies provided guarantees to transfer to the newly created trust funds for Ukraine only €15 million. To compare, the U.S. plans to allocate next year about \$4 billion to support the Afghan National Security Forces,** and about \$1.5 billion will be received from the other countries of the coalition, including through special NATO funds.⁷

The condemnation of Russia's "direct military intervention inside Ukraine" in the final document of the summit, and in **the joint statement of the NATO-Ukraine Commission** is unlikely to convince Moscow to withdraw its troops. More practical sense is in the promise to continue promoting "the development of greater interoperability between Ukrainian and NATO forces, including through continued regular Ukrainian participation in NATO exercises." By the way, **on September 15, at the Javorivsky ground in Lviv region, the Ukrainian-American exercises 'Rapid Trident 2014' began.** 1200 troops from 15 countries took part in it, including the U.S., Canada, Poland, Norway, Lithuania, Georgia and Azerbaijan. **However, the exercises can hardly be called large-scale;** it is remarkable also that only Ukrainian weapons and equipment were used, apparently to avoid the Kremlin's suspicion that the U.S. is supplying weapons to Ukraine. **A week earlier, on September 8-10, the exercises of the Ukrainian and the U.S. Naval Forces 'Sea Breeze 2014' were held in the Black Sea;** the warships from Canada, Romania, Turkey and Spain also took part. Russia expressed its disdain for the exercises by the provocative flyby of its military aircraft over the Canadian 'Toronto' warship.

As for Ukraine's request for military assistance, a joint statement of the NATO-Ukraine Commission noted: "Allies have taken note of Ukraine's requests for military-technical assistance, and many Allies are providing additional support to Ukraine on a bilateral basis, which Ukraine welcomes."⁸ However, despite the optimistic statements of Ukrainian officials, only Italy confirmed its

⁵ Выступление Уполномоченного МИД России по вопросам прав человека, демократии и верховенства права К.К.Долгова на Региональной конференции российских соотечественников Латвии, Литвы и Эстонии, Рига, 13 сентября 2014 года. - http://www.mid.ru/brp_4.nsf/newsline/0AD973C5C78C12B944257D5400382B03.

⁶ President: Ukraine is grateful to NATO member-states and partners for support. - <http://www.president.gov.ua/en/news/31170.html>.

⁷ Тінь Афганістану. - http://gazeta.dt.ua/international/tin-afganistanu-_.html.

⁸ Joint Statement of the NATO-Ukraine Commission. - http://www.nato.int/cps/en/natohq/news_112695.htm.

intention to sell arms to Ukraine (about 90 armored 'Iveco' vehicles). Polish Defence Minister Tomasz Siemoniak announced the readiness of Warsaw to consider the agreements on arms supply if Ukraine makes the relevant proposals. The U.S. promised to supply to Ukraine body armor, radio facilities, vehicles, thermal imaging cameras, medicine, robotic engineers, uniforms, personal protective equipment and dry rations, totaling \$60 million.

Thus, **the Wales summit proved once again that Ukraine can't count on the full-scale support of NATO without full membership in it.** In this context it is important that not only Ukrainian society is ready at last for the idea of membership in NATO, but **68% of citizens of the United States support Ukraine joining the Alliance**, as well as 46% of EU citizens (according to the survey of the American Marshall Fund conducted in June 2014).⁹ Western politicians have to listen to their citizens, so Kyiv has every reason to work actively to achieve the membership criteria, as well as to work more with public opinion in Europe, where there are still 1% more opponents of Ukraine's joining NATO than supporters.¹⁰

⁹ Опитування: Більшість американців та європейців за членство України в ЄС і НАТО. -

<http://www.dw.de/опитування-більшість-американців-та-європейців-за-членство-україни-в-єс-і-нато/a-17913389>.

¹⁰ Ibid.

FOREIGN POLICY OF UKRAINE



KEY THEME ANALYSIS

UKRAINE HAS GOT ITS OWN TRANSNISTRIA AT LAST, MOREOVER – KYIV WILL HAVE TO SUBSIDIZE IT

The reluctance of politicians to lose ratings and the lack of political will to ‘clean’ the law enforcement authorities of saboteurs and Russian agents has deprived Ukraine of the possibility to choose between more or less positive options to resolve the situation in Donbas. In order to win the war, it was necessary to impose martial law, which provides the opportunities to mobilize resources and to apply wartime laws to the generals who sabotage weapons supplied to their own army. In order to acknowledge publicly the impossibility of regaining control over part of Donbas territory in the short term perspective, politicians should ignore the risk of losing ratings before the parliamentary elections.

As a result, Kyiv painted itself into a trap with two bad options – either ‘bad war’ or ‘bad peace’. A **bad war** means the continuation of the hopeless ATO in its current form, because the anti-terrorist operation with its limited arsenal of tools a priori can’t win the war against regular Russian troops. A **bad peace** means self-deception, when Kyiv agrees to transfer control over the part of Donbas (through the local pseudo-elections) to the separatists (de facto to the Kremlin), and agree to subsidize them from the state budget.

It is obvious, that the basic conditions of the ‘settlement’ of the situation in Donbas were discussed during the meetings and telephone conversations of Petro Poroshenko and Vladimir Putin in late August and early September, after the massive invasion of Russian regular troops and after the devastating defeat of the Ukrainian forces near Ilovaisk. **On September 5 2014, in Minsk, ex-president of Ukraine Leonid Kuchma, Russian Ambassador to Ukraine Mikhail Zurabov, OSCE Representative Heidi Tagliavini, and leaders of the self-proclaimed Donetsk and Luhansk ‘Peoples Republics’ Alexandr Zakharchenko and Igor Plotnitsky signed a protocol of the tripartite consultation contact group on a cease-fire.** Despite the fact that the separatists did not fulfill entirely the conditions of the agreement, continued attacks on Ukrainian army positions and even captured some towns, **on September 16 2014 the Ukrainian Parliament adopted the laws on the special order of local government in specific areas of Donetsk and Luhansk regions, as well as on the amnesty for the separatists.**

The "special order of local government" is introduced for three years and de facto means the legalization of the separatists’ control over the territories, captured by them with Russia’s support. On November 7, 2014

local 'elections' are to be held in these areas, which surely will not differ much from the 'referendum' carried out by the Russian troops in Crimea. The local authorities (de facto the separatists) will create their own 'people's militia', and they will approve the appointment of prosecutors and judges. This special region will have the right to "strengthen and deepen" its relations with the administrative-territorial units of the Russian Federation and sign corresponding agreements. At the same time, these areas should be subsidized at the expense of the State Budget of Ukraine.¹¹

It is obvious that the Kremlin will assign these quasi-state entities, which will be formally a part of the Ukraine, with specific tasks, including preventing Ukraine's entry into the EU and NATO, permanent tension to undermine Ukraine in political, economic and security dimensions, and to spread the 'bacillus' of separatism through the other eastern and southern regions. Additional 'bonuses' may include the illegal distribution of weapons, drugs and criminals from Donbas through the whole of Ukraine. If the task of deterring Ukraine's rapprochement with the EU and NATO fails, then nothing will prevent the Kremlin from conducting the 'referendum' and the annexation of Donbas in the Crimean scenario.

The Director of the Foreign Policy Research Institute of the Diplomatic Academy of Ukraine ***Grygoriy Perepelytsia in his comment to 'Forbes' rightly pointed out another important shortcoming of these 'peace' agreements, namely, the lack of provisions which oblige Russia to withdraw its troops***. Mr. Perepelytsia suggests that Putin will try to legalize the Russian military presence in the region through the 'peacekeeping' status, as it has done previously in Transnistria.¹² De facto, Kyiv is the only party to talks, which assumes the responsibility for the fulfillment of the 'peace' agreements. Moscow continues to pretend that it is not a party to the conflict, and the representatives of the self-proclaimed Donetsk and Luhansk 'Peoples Republics' have no legal status because Ukraine does not recognize them.

It is obvious that the negotiations will focus on the area of the territory to be 'given' under separatist control. Law on the special order of local government defines it as the area where the ATO is conducted. Moscow and separatists insist on getting control over the whole of Donetsk and Luhansk regions, but Kyiv can't agree for moral reasons (the huge loss of life during the liberation of these districts from the separatists, and the pro-Ukrainian willingness of the large part of the local population) and because of practical considerations (shale gas deposits in the liberated north part of Donetsk region).

So, after the enormous human and financial losses, Ukraine finally agreed to the conditions which the Kremlin and separatists offered at the beginning of the summer and before the large-scale hostilities. Kyiv was forced to retreat due to its own indecisiveness, the inability of the ATO forces to withstand the better equipped regular Russian army, and the pressure of the EU, which obviously put the reconciliation as a condition of the ratification of the Association Agreement.

The assurances of Yuriy Lutsenko (leader of the presidential party), that Ukraine just takes a break to gain strength and then to tear down the separatists (like Croatia did in the mid-90s), do not account for the differences in the situations. The Serbian Krajina didn't have an army which could frighten the whole of Europe, while regular Russian troops will stand in Donbas or on the border of it, and they will not allow Ukrainian armed forces to enter the region. Attempts of some experts to compare the Minsk agreements with the Khasavyurt Peace Agreement of 1996 are also incorrect, because in Chechnya it was the liberation struggle of the Chechen people, while in Donbas we are dealing with Russia's attempt to annex the territory of another state – to 'punish' Ukraine for its European choice.

Kyiv should look at things realistically and admit honestly that it has

¹¹ Рада проголосувала закони Порошенка по Донбасу. - <http://www.pravda.com.ua/news/2014/09/16/7037933>.

¹² Як далеко може зайти автономія Донбасу. - <http://forbes.ua/ua/opinions/1378631-yak-daleko-mozhe-zajti-avtonomiya-donbasu#print>.

already got its Transnistria. And no subsidies (at the cost of the other regions of Ukraine) may change the situation, because the decisions for the separatists are taken in the Kremlin. So Kyiv has no reasons to provide financial support to the territories under Moscow's control. It's better to call it honestly "territory temporarily occupied by the Russian Federation". It would be fair, if Russia itself rebuilds the region destroyed because of war provoked by the Kremlin, and if Moscow itself subsidizes its puppet governments. The recognition of realities will enable peaceful negotiations on a final exchange of prisoners, will allow the residents of the region and the refugees to choose freely where they want to live (in Ukraine or in the occupied territories), and will give Kyiv the opportunities to equip a secure border to protect the rest of Ukraine's territory. The return of the occupied territories of Donbas will be as difficult as the return of Crimea, and the population of the whole of Ukraine should not be held hostage to this long-lasting process.