

INTERNATIONAL WEEKLY

№ 18-19

05.06.2013 – 19.06.2013



Foreign
Policy
Research
Institute



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FÜR DIE FREIHEIT

UKRAINE – THE EUROPEAN UNION



KEY THEME ANALYSIS

EUROPE ENCOURAGES UKRAINE TO FULFIL OBLIGATIONS: KYIV CONTINUES BARGAINING

In the absence of Kyiv's active steps to fulfilling the obligations required to sign an Association Agreement, Europe has shifted from general calls to concrete ones. Thus, **on June 14, the Venice Commission adopted its opinions on issues concerning reform of Ukrainian legislation.** *Only a proposal of the Constitutional Assembly to exclude Parliament from the process of appointment of judges has been approved.* If appropriate amendments to the Constitution were adopted, judges of courts of general jurisdiction would be appointed by the President on the proposal of the High Council of Justice (under the current Constitution, judges are appointed for the first five years – by the President and then for life – by Parliament). However, under present conditions of presidential and parliamentary majority unity, such constitutional amendments are unlikely to actually strengthen the independence of the judiciary.

The Venice Commission (VC) criticized the Law "On National Referendum" adopted by the Ukrainian Parliament in November 2012, as well as the Draft Law on repeat elections in five constituencies, where results have not been established. *The main VC remark on the Law "On National Referendum" refers to the almost unlimited list of questions that may be put to a referendum without the need to implement its decisions by the Parliament, which threatens to undermine the constitutional separation of powers.* In fact, it is about changing the constitutional order, contrary to the provisions of the current Basic Law.

Among a number of VC remarks on the Draft Law on repeat elections, most attention is given to those relating to reducing the possibility of using the judicial system to restrict the rights of opposition candidates. In particular, the VC offers: to abolish the restriction of rights of a person, convicted of a crime, to nominate MPs (let us recall that politically motivated prosecution is one of the main claims by European officials against the current Ukrainian authorities); to abolish the requirement for five-year residency in Ukraine (this requirement may be used by the authorities to limit the rights of opposition candidates who received political asylum outside Ukraine, to be nominated as MPs); to grant the Central Election Commission (CEC) the right to cancel unjustified decisions of the district election commission on registration of candidates.

The VC also noted *the lack of an independent mechanism for monitoring campaign finance, and the 'unreasonable preferences' for parliamentary parties in*

the formation of election commissions. For the latter it should be noted that under present Ukrainian conditions participation of nonparliamentary parties in the election commission does not guarantee the real empowerment of society to control the elections (due to the wide participation of 'puppet' pro-government parties' members in election commissions). Much more effective in terms of improving the transparency of establishing the election results is *the VC proposition to publish online all the CEC preliminary and final data* from every district and constituency election commission.

The VC recommendation to reduce the election threshold from 5% to 3% is also controversial in terms of possible impact on political processes in Ukraine. On the one hand, it increases the possibility of new political forces entering Parliament; on the other hand it would encourage the dissipation of opposition against the solidity of the ruling party. As for *the VC recommendation to lift the ban on the use of foreign media in the election campaign*, – instead of the increase of public access to information, expected by Europe, it would increase the already considerable influence of Russian media on Ukrainian voters.

The recommendations of the Venice Commission are likely to be partly considered by the Ukrainian authorities – to the extent that it does not threaten the interests of the latter. This will be presented as a sign of Kyiv's goodwill to follow the recommendations of Europe. At the same time, the VC recommendations, designed to protect the rights of opposition candidates, are likely to be ignored, as well as the VC opinion on the Law "On National Referendum", despite the fact that the latter constitutes the most real threat to the statehood of Ukraine among all the questions analyzed by the VC. The current Ukrainian government is hardly ready to deprive itself of such a dangerous political weapon, especially in the context of uncertain prospects for the presidential elections of 2015.

Since calls wrapped in diplomatic language to solve the problem of selective justice did not lead to the desired result, **EU representatives have concretized clearly their demand, naming Tymoshenko specifically.** Former Polish President Aleksander Kwasniewski said to 'Polish Radio': "The European Union has put forward **three conditions** that must be fulfilled so that the Association Agreement with Ukraine can be signed in November of this year at the Eastern Partnership Summit in Vilnius. **These are the reform of the legal system, that of the electoral law and the case of Yulia Tymoshenko.**"¹ Lithuanian Minister of Foreign Affairs Linas Linkevicius said: "Many countries deem the case of Yulia Tymoshenko a symbol of a legal country... The attitude of some countries (to the signing of the Association Agreement) depends on the settlement of this problem."² US Senator Richard Durbin's Draft Resolution 165, to be adopted in September, also calls on the European Union members to include the release of Tymoshenko from imprisonment as an important criterion for signing an Association Agreement.

Given the concretization of the EU's requirement concerning Tymoshenko, it will be difficult for the Ukrainian government to continue its attempts to transfer the discussion to general questions of decriminalization of certain articles of the Criminal Procedure Code. Under such conditions, **the probability of sending Tymoshenko for treatment in some EU country increases.** The most likely option is Germany, because, *firstly*, Tymoshenko's issue is principal for Angela Merkel, who is convinced that Viktor Yanukovich has given her a promise to release the former prime minister; and *secondly*, only a deal with Berlin can be considered by Kyiv as a sufficient

¹ Александер Квасневський про місію ЄП в Україні. <http://www.polradio.pl/5/38/Artykul/137917,Александр-Квасневський-про-місію-ЄП-в-Україні->

² МЗС Литви: Питання звільнення Тимошенко в країнах ЄС – символічне. <http://www.pravda.com.ua/news/2013/06/16/6992323/>

guarantee for signing the Association Agreement.

Meanwhile, **Kyiv keeps trying to bargain some concessions from the European Union, dividing roles between the two most influential Ukrainian officials: Yanukovich declares the priority of European integration, while Azarov hints at other possibilities, referring to the Customs Union.** Thus, the annual Presidential Address to the Parliament states that European integration "is the most important foreign policy priority", and Ukraine's commitments due to the Association Agreement with the EU should be taken into account when considering "the issue of Ukraine's participation in the Eurasian integration project."³ Au contraire, Mykola Azarov in his interview with 'Le Figaro' expressed the uncompromising approach to the EU's requirements: "All attempts to dictate to us how to behave are doomed to failure ... I will not associate the fate of European integration with Yulia Tymoshenko". He also reminded us that "our Eastern partners have the alternative, offering us to join the Customs Union."⁴ In an interview with Radio 'RFI' the Ukrainian Prime Minister recalled the prospects for cooperation with BRIC and expressed Kyiv's expectations for the EU's "movement in our direction" (i.e. concessions?): "We expect this movement at the summit in Vilnius, where we will sign the Association Agreement."⁵

Moscow does not intend to give up 'without a fight'. It offers Kyiv a 'carrot' in the form of promises to reduce the gas price, and at the same time threatens to 'whip' in the form of customs barriers with non members of the Eurasian Economic Space (EES). Russian presidential advisor Sergei Glazyev called Ukraine's possible signing of the Association and Free Trade Agreement with the EU "suicide". He also promised "gas and oil without customs duties" in case of joining the Customs Union⁶. S.Glazyev reminded us once again that "observer status, which we plan to take into account when forming the legal basis of the EES, would be available only to those countries who have expressed a willingness and desire to join the EES."⁷

Moscow's threats of tariff barriers for Ukrainian exports in case of the Association Agreement signing recall similar Kyiv 'threats' of joining the CU (hoping to use this bluff to win some concessions from the EU). Since Russia and Ukraine are WTO members, they have obligations regarding customs tariffs; and possible disputes concerning Ukrainian exports should be resolved according to WTO rules. Moreover, Russia is also interested in economic cooperation with Ukraine, which is an important market for Russian products, and a necessary partner in a number of co-production projects (for example, in aircraft). Thus most likely, **Ukraine's signing of the Association Agreement with the EU would not close the possibilities of cooperation with Russia, but rather force Moscow to offer more attractive terms.**

³ Щорічне Послання Президента України до Верховної Ради України.

<http://www.president.gov.ua/docs/poslannia2013.pdf>

⁴ Азаров вже не приховує, що вимоги ЄС до України "приречені на провал". <http://tyzhden.ua/News/82300>

⁵ Ексклюзивное интервью премьер-министра Украины Николая Азарова RFI.

<http://www.russian.rfi.fr/ukraine/20130617-eksklyuzivnoe-intervyu-premer-ministra-ukrainy-nikolaya-azarova-rfi>

⁶ У Росії застерігають Україну від "самогубства".

http://www.bbc.co.uk/ukrainian/news_in_brief/2013/06/130614_az_eu_ukraine_russia.shtml?print=1

⁷ У Росії кажуть, що для України – або асоціація з ЄС, або "спостереження".

<http://www.pravda.com.ua/news/2013/06/14/6992233/>

UKRAINE – NATO



KEY THEME ANALYSIS

NEW PRESIDENTIAL DECREE "ON THE ANNUAL NATIONAL PROGRAM OF UKRAINE - NATO COOPERATION" ENVISAGES COOPERATION IN ALL FIELDS

On June 12, President Viktor Yanukovich signed Decree #328/2013 "On the annual national programs of Ukraine–NATO cooperation", which will replace the Decree of the President of Ukraine of May 12, 2009 #298 "On an annual national program to prepare Ukraine for membership of the North Atlantic Treaty Organization". *Changes envisage improvement of the preparation mechanism and term, and the approval and implementation of annual national programs of Ukraine - NATO cooperation, as well as harmonisation of terminology with non-bloc policy fixed in legislation.*

By his Decree V.Yanukovich committed the Cabinet of Ministers, according to the Law "On the basis of internal and foreign policy" and the decisions adopted at the NATO – Ukraine Commission meetings on December 3, 2008 in Brussels and on April 15, 2011 in Berlin, to submit every year up to December 15 a draft national program of Ukraine – NATO cooperation for the following year. A draft should contain medium-term objectives for two or three years and the priorities and key actions for the current year and should be agreed with the Alliance. The list of issues of mutual interest for Ukraine and NATO, on which the Cabinet of Ministers is committed to prepare a program of actions, is extremely broad: social, political, foreign policy, economic, legal, military, security and defense, resources provision.

Thus, **the formal withdrawal from the Decree's title of words about preparations for NATO membership is 'compensated' for by the requirements to prepare and agree with the Alliance beforehand, on clear deadlines, annual plans for broad multilateral cooperation in practical terms**, as well as to determine the medium-term objectives of cooperation for two-three years.

It should be noted that the potential for mutually beneficial cooperation between Ukraine and NATO on a practical level is substantial indeed. At the present stage, **in the context of the European integration process of Ukraine, the most promising issues of cooperation could be:** deepening military cooperation of Ukraine with the countries of Central and Eastern Europe, the Baltic States, and Scandinavia; activities in the framework of "common education, training and learning"; cooperation in the field of energy supply reliability and its diversification, environmental problems management.

By the way, in the context of practical cooperation between Ukraine and NATO, the meeting of Chief of Staff – First Deputy Commander of the Naval Forces of Armed Forces of Ukraine Rear Admiral Dmitro Shakuro with the delegation of the Alliance headed by the Director of Cooperation and Regional Security Division, NATO International Military Staff Major-General Carlos Branco took place on June 7 in Sevastopol. The parties discussed preparation of the Ukrainian Fleet to *participate in anti-piracy and anti-terrorist NATO operations at sea, as well as the standardization and improvement of interoperability of the fleet units with the subdivisions of the NATO member-states' armed forces*. In particular, the issue of training the frigate 'Hetman Sahaidachnyi' for the planned participation in the NATO operation Ocean Shield was discussed.



FOREIGN POLICY OF UKRAINE



KEY THEME ANALYSIS

WHAT IS BEHIND THE DIVERSIFICATION OF RUSSIAN GAS SUPPLIERS AND REDUCTION OF UKRAINE'S GAS PURCHASES DIRECTLY FROM GAZPROM?

Ukraine is continuing a policy of diversification of suppliers of Gazprom's gas. In this case it is only the diversification of suppliers, all of which sell the gas of Russian origin. Thus, in November 2012 Ukraine began reversing Russian gas imports from Germany, according to the agreement with the German RWE Supply & Trading and Polish Gaz-System (from April 1, 2013 revenues is up to 5 million m³ per day). From April 2013 gas supplying through Hungary began in accordance with the technical agreement with a local company FGSZ LTD. The current technical capability of 3 million m³ per day would increase after appropriate technical measures to up to 15 million m³ per day. In addition, Ukrtransgas has signed a memorandum with Romanian SNTGN Transgaz on the possibility of transit through this country of 5 million m³ per day. **Ukraine is also negotiating with Slovak Eustream, through which management of RWE Supply & Trading expects to be able to re-export to Ukraine up to 30 billion cu. m of gas per year, – that might cover all Ukrainian needs for gas imports.**⁸ If the project succeeds, European gas suppliers would have the opportunity to use Ukrainian underground gas storage facilities. Overall this year Ukraine plans to buy 1.3 billion m³ of gas from RWE Supply & Trading.

The range of suppliers, who buy gas directly in "Gazprom", is also expanding; and in this regard one can see the interests of oligarchs close to the authorities. Since 2011 Dmytro Firtash's *Ostchem Holding* has a contract for the purchase of 8 billion m³ of gas per year. The *Eastern European Fuel and Energy Company* (the press associates it with Kharkiv businessman Sergiy Kurchenko), negotiates to buy from Gazprom 5 billion m³ of gas per year⁹.

Besides real diversification of suppliers, Kyiv also discusses presently virtual projects, which in the near future could be just a means of psychological pressure on Moscow in negotiations on gas prices. President V. Yanukovich in his annual Address to Parliament proposed to recall the idea of *gas pipeline "White Stream"*, which could be an alternative route for gas imports to Ukraine from Azerbaijan, Turkmenistan and

⁸ RWE: реверсні поставки газу через Словаччину можуть врятувати Україну від Газпрому. <http://news.finance.ua/ua/~1/0/all/2013/06/14/303773>

⁹ Україна показала "Газпрому" нове лице. <http://www.kommersant.ua/doc/2213227>

Kazakhstan. Former Prime Minister Y.Tymoshenko in 2005 and 2008 made unsuccessful attempts to promote this project, failing to find support in Europe and in Ukraine.

Russian Gazprom's countermeasures include negotiations with the Romanian and Bulgarian suppliers in order to contract all their GTS power and prevent plans to organize gas re-export to Ukraine. Meanwhile, **Gazprom failed to force the German trader RWE Supply & Trading to suspend re-export to Ukraine in exchange for a promise to reduce the gas price**¹⁰. One could suppose Gazprom will offer the Germans more favorable conditions later, if it considers the dynamic of the gas reverse to Ukraine as threatening its interests.

The Ukrainian government approved the projected balance of income and distribution of natural gas in Ukraine in 2013, with the import volume of 27.3 billion m³, just 18 billion m³ of which are expected to be supplied from Gazprom. The head of Naftogaz Ukraine Eugene Bakulin said that his company planned to buy from Russia not more than 18 billion m³ of gas in 2014.¹¹ These figures are obviously smaller than the 41.6 billion m³, which Ukraine was committed to buying in terms of 'buy or pay' according to the gas agreement of 2009. **Such an unusually bold stance of the Ukrainian authorities concerning the shortage of contracted gas purchases is somewhat astonishing, especially against the 7 billion penalty required by Gazprom for the shortage of gas purchase in 2012.** Several explanations for this Kyiv behavior might be suggested. Firstly, Kyiv could be confident that Moscow would not address a claim to the international court for fear of losing. Secondly, the diversification of Russian gas suppliers is beneficial for authorities-related oligarchs standing behind the intermediary companies. Thirdly, Naftogaz Ukraine does not have sufficient funds to pay for the contracted volumes of gas.

And most likely could be a **version of negotiating debt relief in exchange for the transfer to Russia of control over the Ukrainian GTS.** In this context one should recall Deputy Chairman of Gazprom Alexander Medvedev's words about "recording gas purchase shortages". A.Medvedev added as well that the contract with Ukraine did not provide price reduction terms, but it might take place outside the contract regulation¹². Incidentally, consulting company Baker Tilly has just recently completed an assessment of the Ukrainian GTS, carried out at the Ukrainian government's request. In addition, the draft law on Naftogaz privatization has been forwarded to the Supreme Council. In this situation it is worth remembering that the **possible transfer of the Ukrainian GTS to Gazprom could critically reduce not only energy, but also the general economic and political independence of Ukraine.** One might forget about energy supply sources diversification. And Moscow would gain an opportunity to exert significantly stronger pressure on the Ukrainian government and to control directly the gas supply for Ukrainian enterprises.

¹⁰ Газ остался в цене. RWE не захотел отказываться от Украины ради скидок "Газпрома"

<http://www.kommersant.ua/doc/2208555>

¹¹ У Нафтогазі розповіли, скільки російського газу придбають у 2014 році. <http://tyzhden.ua/News/82092>

¹² Перегляд угод з Газпромом: Німеччині можна, Україні – зась.

http://www.bbc.co.uk/ukrainian/business/2013/06/130605_gasprom_ukraine_eu_arbitrage_az.shtml?print=1