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## UKRAINE – THE EUROPEAN UNION



### KEY THEME ANALYSIS: Conclusions from the December EU Foreign Affairs Council as for the prospects of relations with Ukraine

***The EU Foreign Affairs Council meeting*** held on **December 10, 2012 in Brussels**, has resulted in publishing certain conclusions concerning Ukraine. The main conclusion stated that the level of relations between Ukraine and the EU would depend on implementation of Ukrainian reforms being put on the agenda of the Association Agreement, as well as the country's willingness to address the consequences of selective justice. The EU Council meeting has unanimously upheld a decision concerning Ukraine with its content being known beforehand.

According to the European Union Council conclusions, they have confirmed the EU intention to sign the Association Agreement, including a deep and comprehensive free trade area. Though the step would be taken only if Ukraine demonstrated decisive actions and progress in three key areas outlined in the document. The three areas were: (i) progress in addressing the issue of selective justice and preventing its recurrence; (ii) the compliance of the 2012 parliamentary elections with international standards; (iii) implementation of reforms defined in the jointly agreed Association Agenda<sup>1</sup>.

***The parliamentary elections*** held on October, 28 2012 caused a notable concern of almost all observers, who were at that time in Ukraine. The European Union was no exception. One of the first points of these findings was an appeal to the official authorities of Ukraine on the need to address the post-elections shortcomings. According to Štefan Füle, by the 2015 presidential elections Brussels is expecting Ukrainian parliament to approve a new Election code, being worked out several years ago with the European Union experts' support. In contrast, the Verkhovna Rada of Ukraine has already adopted the law on elections establishing convenient to the ruling party 'mixed' system of voting. The European Union would not leave the matter unattended, because, *firstly*, too much money, efforts and initiatives have been used to develop the Code, and *secondly*, the Election Law has clearly demonstrated all the problems of the electoral process in Ukraine that have to be prevented in the future.

As far as the issue of ***selective justice*** is concerned, the document does not give any specific names. The Council therefore wishes to draw attention not only to specific cases, but to the problems that exist in Ukraine's judicial system as a whole. This is a general reform of the judicial system, in close cooperation with the Council of Europe / Venice Commission, concerning in particular changes in the Law on the Prosecutor, the

<sup>1</sup> Vysnovky Rady ES po Ukraini (11/12/2012). [Elektronny resurs:  
[http://eeas.europa.eu/delegations/ukraine/press\\_corner/all\\_news/news/2012/2012\\_12\\_11\\_1\\_uk.htm](http://eeas.europa.eu/delegations/ukraine/press_corner/all_news/news/2012/2012_12_11_1_uk.htm)]

Criminal Code, the Law on the Judicial System and Status of Judges, namely the role of the High Council of Justice.

Another issue being formulated by the EU was compliance of the foreign trade obligations recorded in the protocol on Ukraine's accession to the WTO. This is rejection of Kyiv's plans to review hundreds of tariff lines as well as introduction of discriminatory utilization fee on cars.

Analyzing the findings of the EU Foreign Affairs Council meeting one should indicate that they have not raised any unrealistic demands to Ukraine. In fact, ***the EU has once again declared its desire to sign the Association Agreement, though has iteratively stressed the implementation of the proposed requirements as well as unwillingness to waive its general values and principles.***

Official Kyiv needs to demonstrate at least a partial understanding and certain specific steps to address the issues been highlighted. But despite this Ukraine undertakes steps that can drastically change the direction of its foreign policy. December 5, 2012 during his being in Ashgabat President of Ukraine Viktor Yanukovich announced the introduction of 'certain provisions' of the Customs Union. During his stay in New Delhi, he said that Ukraine was harmonizing its legislation with the norms of the Customs Union. Despite all the comments, criticisms, conclusions and decisions by the European Union, official Kyiv is steadily approaching the Customs Union, essentially meaning its future integration.

At the same time, the European Union still trying not to lose all hope predicts a possible date for signing the Association Agreement and expects it to happen during the EU-Ukrainian summit, meeting of the EU-Ukraine Cooperation Council and the "Eastern Partnership" summit in Vilnius. Dates of pending bilateral summit in Brussels are still not defined. Though there was recently heard a rumor spread by mass media that Catherine Ashton during a telephone conversation with the Acting Prime Minister Mykola Azarov noted the EU intention to conduct the EU-Ukraine summit in early 2013.

At the same time, the European Union is trying to influence the public opinion, stressing the real benefits Ukraine would receive after signing the Agreement. With this purpose a new brochure "EU-Ukraine Association: what it would bring to you" was produced on December, 13. The brochure should provide basic information about the practical prospects and benefits of the Association Agreement between the EU and Ukraine.

Back in 2009 when Kyiv and Brussels launched negotiations on the Association Agreement, Ukraine was a role model for the "Eastern Partnership" countries to be the first to sign the Association Agreement. Today Kyiv has not only ceased to be this model, but also is running the risk of losing last of its previous achievements in its European integration progress. However, the EU hopes that the next summit of the Eastern Partnership will result in Moldova, Georgia and Armenia signing the Association Agreement with the EU. The European Union hopes to sign this document with Ukraine as well, though expressing little confidence in this. Some experts believe that Europe would lose nothing by signing the Agreement because the next step would be the ratification process, and at this point the countries would be able to express their positions and to propose additional conditions, but it would inevitably question the importance of human values, the principle of democracy and all other aspects being protected and supported by the EU.

Thus, at the moment, next step should be made by Ukraine. Everything depends on the actions of official Kyiv that will determine further development of relations between Ukraine and the European Union.

## UKRAINE – NATO



### **KEY THEME ANALYSIS: *Meeting of NATO Foreign Ministers showed that Ukraine, unlike Russia and Georgia, has remained outside the Alliance's strategic priorities***

Addressing critical issues of international security, which are sometimes not included in the geographical area of the organization activities during the last decade has become direct tasks of NATO, which stands as one of the most important guarantor of stability in a number of 'hot spots' of the globe. So once again when completing the two-day meeting on **December 5, 2012 the NATO foreign ministers** agreed to strengthen Turkey's air defense potential in order to create a funding mechanism for the Afghan security forces, and to intensify cooperation with Western Balkan countries and global partners as well. However, the focus was cooperation with Russia and the Alliance's future relationships with Georgia.

Not surprisingly, **December 4, 2012 the NATO ministerial meeting began with sittings of the NATO-Russia Council (NRC)**, which agreed to strengthen cooperation in 2013 in issues concerning common strategic interest. Thus, it was agreed to expand the project combating drugs, in particular, drug trafficking from the territory of the IRA with special trainings for the female employees of the Afghan police as well as training to work with dogs in order to combat drug trafficking being organized. The parties also addressed the situation in the south-eastern border of NATO and discussed areas of practical cooperation in the fight against terrorism and cooperation with the disposal of surplus ammunition. As far as the Afghan Air Force helicopter fleet is concerned the parties expressed their readiness to conduct helicopter maintenance trainings as well.

However, while agreeing on a stable Afghan cooperation, the parties, de facto, 'closed their eyes' to the existing contradictions in issues concerning cooperation between Russia and NATO and its main ideological (and, of course, financial) leader - the USA. Purchase of ten Mi-17 helicopters, being arranged in May 2011, was questioned by the US Senate that on November 29, 2012 approved an amendment to the country's defense budget prohibiting the Pentagon to deal with "Rosoboronexport" including supply of helicopters to the IRA. In fact, the ban could come into force on January 1, 2013, imposing a veto on the delivery of 21 helicopters Mi-17B-5, parts and equipment to the sum of 900 million US dollars.

Of course, Washington is trying to strengthen its position in the country after 2014 (the final date of the withdrawal of allied troops from Afghanistan) and is trying to overcome the opposition of the international community as to the legal validity of the U.S. military stays in the IRA. Thus, Russia is actively interested in the strategy of the



organization in the country after 2014, insisting on the continuation of a simplified procedure for transit of military goods through Russian territory on behalf of the International Security Assistance Force (ISAF) and expanding the Trust Fund to service Russian-made helicopters available to disposal of the Afghan army.

Moscow has realised that the defeat at this stage entails defeat throughout the fight, and the Pentagon's ban to cooperation with "Rosoboronexport" is the first step to it. Moreover, the argumentation by American politicians is more than convincing: immediate intervention in Russia's politics that is allegedly supporting Syrian government. Taking into account the experience of 2008, when "Rosoboronexport" was accused of violating the non-proliferation regime through arms deliveries to Iran, one can predict the implementation of Senate's sanctions. Moreover, the position of the two countries in Syria is completely antagonistic and NATO claims that current military operation in Syria is not even discussed by the Alliance.

However, this possibility is not excluded by the UN that is quite actively discussing the possibility to send peacekeepers to Syria. And, although it is a contingent from 4 to 10 thousand people, the Alliance is unable to send a full equipped unit to the country without redeployment of its composition from other 'hot spots'. Consequently, humanity once again is facing a dilemma of solving a large-scale conflict, however, it seems that the U.S. will solve it faster than anyone else. So, December 11, 2012 U.S. President Barack Obama announced the recognition of the National Coalition of Syrian revolutionary and opposition as a legitimate representative of the Syrian people to be provided with full support.

Being united with the U.S., the same position was shared by the EU. However, the Russian Foreign Ministry continues to insist that the civil war in Syria might be terminated only through negotiations in the framework of the Geneva agreements signed on June 30, 2012, under which the five permanent UN Security Council members and a number of Syria neighboring countries agreed to form a provisional government of Syria involving all parties of the conflict, the situation being emphasized by Moscow, blocking anti Syrian resolutions in the UN Security Council. However, in this case it is united in its beliefs.

Moreover, ***Russia has cautiously addressed a decision to deploy in Turkey the U.S. Patriot missile systems to strengthen the air defense capacity of the country, an agreement being reached by NATO on December 4, 2012.*** According to the official claims, this campaign will be purely defensive and not directed at ensuring a no-fly zone, or any offensive operations. In fact, using the right to collective defense as set out in Article 5 of the Washington Treaty, November 21, 2012 Turkey (as a member) sent a NATO official request for the Patriot missiles deployment on a 900-kilometer border with Syria because of the numerous attacks of its border areas by Syrian militants.

In fact, the main problem is a continuous stream of refugees from Syria to Turkey exceeding 100 thousand people that do not use their official status of refugees, preferring to be 'guests'. To reduce their flow, Ankara seeks from the international community to build a protective zone for the civilian population on Syrian side of the border.

NATO has also demonstrated a commitment to a new strategic concept of NATO and the decisions by Bucharest Summit (2008). The ***December 5, 2012 meeting of Georgia-NATO Commission*** was another confirmation of the commitment, with the NATO foreign ministers noting the progress made by Georgia and calling on all parties to maintain the dynamics of democratic reforms. Ministers also praised the exemplary commitment to Afghanistan mission manifested by Georgia, which would continue to participate in international operations to ensure security in Afghanistan after 2014, when the majority of foreign troops would be withdrawn.

These days there are about 1,570 Georgian troops serving in Afghanistan. According to the number of its troops in Afghanistan, this small country with a population of 4.5 million people is ahead of all other countries that are not members of NATO. Therefore, neither conflicts with Russia nor any territorial conflicts (caused by several countries' recognition of sovereignty of Abkhazia and South Ossetia) currently existing in the country, will prevent Tbilisi to integrate into the Euro-Atlantic space. Therefore, emphasizing the priority of establishing relations between Georgia and Russia, NATO insists on full respect for the sovereignty and territorial integrity of Georgia within its internationally recognized borders, preventing Russia's ability to use the actual veto on NATO enlargement.

*Unfortunately Ukraine with its neutral status, as being expected, remained outside the priorities of NATO strategic course. Absence of Ukrainian question on agenda of ministerial meetings on December 4-5, 2012 negates all attempts made by Ukrainian government to establish a purely 'pragmatic' partnership with the Alliance, lacking in its grounds any ultimate goal. Probably that is why the West is just tired to fight for nothing. And what for? As, in fact, the relationship should be built by the two parties on an equal basis. In the case of Ukraine it is Russia that has taken the position of the other party.*

## ***FOREIGN POLICY OF UKRAINE***



### **KEY THEME ANALYSIS: Visit to Moscow has failed, but Ukraine's prospect of losing its sovereignty over accession to the Customs Union remains**

Intensified relations between Presidents V.Yanukovych and V.Putin under conditions of extreme vulnerability of the position of official Kyiv have only exacerbated feelings of threatening prospects for Ukraine's independence. Under this increasing pressure coming from both the West and Russia, exhaustion of the policy of balancing between the two poles of integration became obvious. Space for geopolitical maneuver has disappeared and President Yanukovych has to face the need for making a dichotomous decision when the country's consent to join the Customs Union means the loss of European integration vector and vice versa.

Loss of European integration prospects was manifested in postponing signing the Association Agreement, threat of imposing sanctions against the ruling elite, exsanguinated Ukrainian economy, and Russia's gas noose fastening as the winter comes, made Ukrainian political leadership more inclined to join the Customs Union. This 'bondage integration' makes no preferences for Ukraine, while pushing the country to face the loss of its state sovereignty. On the other hand, rejection of accession to the Customs Union means Moscow's increasing pressure, with Yanukovych not being able to oppose.

Thus, Ukrainian tactics were built on purpose to assure the Kremlin of its will to join the Customs Union, but at the same time to formally avoid the legal membership in the Union not to be bound by any relevant obligations. The concept of such participation in Russian integration associations has been tested by Ukraine in the case of the country's participation in the CIS while being a founder of the Commonwealth it was not formally a member of this organization because it had not signed the Charter.

The first embodiment of this concept into practice in its relations with the Customs Union was the '3+1' formula suggested by Kyiv in 2011. However, this formula of the Customs Union participation, unlike the CIS, a priori was not possible because the Union had to be part of the Eurasian Union with all national sovereignties being delegated to supranational bodies, directly or indirectly subordinated to Russia. That was why Russia had immediately rejected the possibility of the '3+1' formula in its relations with Ukraine. During the negotiations, the Russian part gave an explanation regarding the possible format of cooperation between Ukraine and the Customs Union: "Such cooperation might be implemented based on the principles of Ukrainian full membership in the Customs Union".

This year's version of the formula was official Kyiv's intentions to join some provisions of the agreements signed within the Customs Union's framework. So the

result of a backstage face-to-face meeting between V.Yanukovych and V.Putin during the CIS Ashgabat summit was Yanukovych's statement as for the need to "join some of the provisions of the Customs Union, as well as those rules implied in the Union". The same argument was reiterated by President V.Yanukovych during his visit to India.

As it turned out, the realizations plan of this version, according to the newspaper "Dzerkalo Tyzhnia. Ukrain"(Mirror Weekly) was the fact that on December 18, 2012 during his visit to Moscow President of Ukraine had to apply not for membership in the Customs Union, but for the Eurasian Economic Community (EurAsEC) membership which is the first step of accession to the Customs Union, and simultaneously to claim the intention to start the process of joining the Customs Union<sup>2</sup>. Accordingly, on December 19, 2012 during the EurAsEC Moscow summit the formal process of Ukraine's accession to these organizations should have been officially started. It was originally intended by the authors of the version of this partial accession to the Customs Union that would allow Ukraine to join several provisions within the Customs Union, which would give the country the necessary trade preferences with the Union members: Russia, Belarus and Kazakhstan. However, the situation was categorically rejected by Moscow with V.Putin not seeing the point in a regular meeting with V.Yanukovych, the fact stated in Russian Ambassador to Ukraine Mr.Zurabov's interview. Moscow would be satisfied only with Ukrainian full membership in the Customs Union, because this organization is nothing but a political and economic instrument to take Ukrainian state sovereignty in the hands of Moscow and return Ukraine under the Russian rule.

In this way Russia wants, *firstly*, to make the Eurasian Union a center of integration processes for the whole Russia and transform the Russian Federation into a larger form of the Russian state, which, besides Russia itself, would include the members of the planned association. This will help to stabilize processes in Russian society and ensure the survival of the imperial model of statehood through expansion and involving recourses from its neighbors. Special stake is done to support reintegration processes within the Eurasian Union by ethnic Russians and Russian-speaking population outside Russia, which is regarded as a powerful mobilization resource in the implementation of this ambitious project.

*Secondly*, Russia is trying to strengthen its geopolitical influence and competitiveness by combining natural resources, capital and human potential of the Eurasian Union countries and thus become a key player in global processes along with the EU, U.S. and China. It is no accident that the Eurasian Union should be formed on the basis of four potentially wealthiest countries: Russia, Belarus, Kazakhstan and Ukraine.

*Thirdly*, Russia wants to prevent post-Soviet countries of European integration, offering them a no less 'attractive' than the European Union alternative, to deprive them of their right of subjectivity in relations with the EU. Implementation of this goal concerns mostly those post-Soviet countries seeking integration not in Russia, but in the EU, or those who are trying to observe the principle of a 'strategic balance' between the EU and Russia.

*Fourthly*, Russia seeks to change the geopolitical and geo-economic configuration of the European continent in its favor by formation of a bipolar balanced system of relations with the EU and thus influence global processes in the world. V.Putin suggests that "economically logical and balanced system of the partnership of the Eurasian Union and the EU can create real conditions to change the geopolitical and geo-economic configuration of the whole continent and would have a positive global effect".

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<sup>2</sup> Oleksandr Sushko. Chy nadovgo perepochynok pislia "istorychnoho visytu, shcho ne vidbuvsia"?// Dzerkalo Tyzhnia. Ukraina.— №47, 21 grudnia 2012. [Elektronny resurs: [http://dt.ua/POLITICS/chi\\_nadovgo\\_perepochynok\\_pislya\\_istorichnogo\\_vizitu,\\_scho\\_ne\\_vidbuvsia-114196.html](http://dt.ua/POLITICS/chi_nadovgo_perepochynok_pislya_istorichnogo_vizitu,_scho_ne_vidbuvsia-114196.html)]



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*Fifthly*, becoming this way one of the world centers of power, Russia is trying to restore its complete dominance over large regions of Eurasia in order to, on the one hand, push the EU away from Eastern Europe, and on the other hand, to deprive China of potential impact on Central Asia. While controlling this space, Russia in the form of the Eurasian Union in one case could be a bridge both to the Asia-Pacific region and to Europe, while in the second case it could be a buffer between China and the West. *Sixthly*, in order to reassure Europe and the U.S. as for geopolitical ambitions of this project it would be submitted as a plan to build a 'Greater Europe'.

***The main element of depriving the countries-members of the Customs Union of their sovereignty is a distribution of tariff barriers among its members: the share accounted for Belarus is 4.7%, Kazakhstan's share is 7.33%, while Russia gets 87.97%. If Ukraine joins the Customs Union, it will receive no more than 10% despite the fact that Ukrainian Customs provides for about 40% of the state revenues. So the economic benefit from Ukraine's joining the Customs Union being supported by Russian followers seems very controversial.***