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Prospects for Ukraine's Association with the EU

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With increasing instances of Ukrainian authorities disregarding respect for democratic values, signing an Association Agreement between the European Union and Ukraine remains in question. A failure of negotiations means a risk of a further deterioration of Ukrainian democracy and a lack of progress in the socio-economic modernisation of the state. The European Union should continue its efforts to sign the Association Agreement with Ukraine as soon as possible. The document contains obligations that would extend possibilities to exert influence on Ukrainian authorities in terms of democratic standards while its publication would open the way for substantial discussion on the benefits of integration with the EU.

Actual Background. Negotiations on the EU–Ukraine Association Agreement, which would replace the Partnership and Cooperation Agreement in force since 1998, have been ongoing since March 2007. An important element of the new agreement is the introduction of a Deep and Comprehensive Free Trade Area. The agreement foresees the mutual opening of internal markets and the adjustment of Ukrainian legislation and standards to relevant EU norms in trade and trade-related areas, such as intellectual property, public procurement and competition over a period of up to 15 years. Thanks to the agreement, Ukraine would have the chance to set up a trade regime with the EU similar to the one functioning under the framework of the European Economic Area. The last round of negotiations took place on 11 November 2011. The parties announced that the document had been mostly agreed. Putting a clear membership perspective for Ukraine in the document's body remains the only issue to be agreed. Final compromise on this matter as well as the formal conclusion of negotiations could take place during the EU–Ukraine Summit, which is to be held on 19 December 2011 in Kiev.

The Nature and Causes of Ukraine's European Policy Crisis. There is the likelihood that the Association Agreement will not be signed because of recent actions by Ukrainian authorities that indicate non-compliance with the principles of democracy. Some months after Viktor Yanukovich won the 2010 presidential elections, the Constitutional Court significantly strengthened the president's power by cancelling the constitutional reform of 2004. In 2011, Freedom House has noted a deterioration in political rights, civil liberties and media freedom in Ukraine, thus moving it from the category of free countries to the partly-free group.

The most recent significant issue related to non-compliance with democratic values has been the use of the country's courts to oppress the political opposition. Former Minister of Interior Yuriy Lucenko has remained in custody without a court verdict since December 2010, when he was charged with abuse of power. On 11 October 2011, former Prime Minister Yulia Tymoshenko was convicted of abuse of power during negotiations on a gas contract with Russia in 2009. She was sentenced to seven years in prison, a fine as compensation for \$200 million in losses incurred by the state fuel company Naftohaz and a ban on holding public office for three years. Doubts about her guilt are raised by the fact that the verdict was based on an outdated criminal law that allows the punishment of state officials who make political decisions. The verdict became a pretext to cancel president Viktor Yanukovich's visit to Brussels, which was scheduled for 20 October 2011. From the EU's perspective, this episode is the most significant argument in favour of the position that Ukraine is not ready to sign the Association Agreement.

The Ukrainian authorities seem to be incapable of introducing economic reforms as well. The EU and the IMF, which provides Ukraine with stand-by credit, expect the repair of public finances

in particular. The current Ukrainian government has endeavoured to re-negotiate the 2009 gas contract with Russia. A reduction in gas prices would allow Ukraine to mitigate its budget deficit and, as a result, fulfil the conditions for obtaining the next tranche of IMF credit without reforming the internal energy market and taking the unpopular step of rising gas prices for households. This goal can be achieved at the expense of concessions to Russia, which is interested in taking control over the Ukrainian gas transportation system and gaining Ukraine's accession to the customs union established in 2010 among Russia, Belarus and Kazakhstan¹.

The Importance of the Association Agreement. From the EU's point of view, signing the Association Agreement with Ukraine is important because it is going to become the first document of its kind among the Eastern Partnership. Taking into account Ukraine's significance in the region, the document can provide a pattern for negotiations on similar agreements with other EaP countries. It is worth noting that the agreement can create a convenient investment climate in Ukraine for EU-based companies in the long run. From Ukraine's point of view, signing the agreement will also provide benefits, in both economic and geopolitical terms—by strengthening its position in the post-Soviet space. Undoubtedly, a considerable number of large businesses that operate in export-oriented fields, such as the metallurgy and chemical industries, are interested in the facilitation of trade with the EU. However, establishing a DCFTA means risking opening competition to strong EU-based companies that operate in less technologically advanced fields, such as agriculture and transport, as well as in finance and banking. Taking into account the significant costs of adjusting to the EU's norms and standards, support for the Association Agreement on the part of large businesses is differentiated, no matter what industry it represents. Small and medium businesses may have the potential to obtain the most significant benefits from the implementation of the Association Agreement because of an improvement in the investment climate and access to the EU's internal market.

The Consequences of the Crisis. Kiev's official and firm position about the inclusion of a membership perspective in the Association Agreement can be interpreted as an attempt to put the blame on the EU if negotiations fail. The Ukrainian authorities seem not to exclude the possibility of withdrawing from integration with the EU internal market in order to join the Russian integration structures. On 18 October 2011, Ukraine signed an agreement on establishing a free-trade area with the CIS. At the moment, this step does not contradict efforts to set up a DCFTA with the EU; however, if Ukraine joins the CIS customs union, deeper economic integration with the EU would become impossible. If Ukraine does not sign the Association Agreement it does not mean the end of dialogue and cooperation between the EU and the country, but the scope of cooperation would be limited. Without Ukraine's integration into the EU internal market, the implementation of necessary structural reforms and the modernisation of the economy is likely to be less plausible. The quality of Ukrainian democracy would further deteriorate as well, affecting other Eastern Partnership countries in a negative way.

Recommendations for Poland and the EU. At the moment, the EU member states should agree to sign the Association Agreement with Ukraine as soon as possible. This will be beneficial for the further development of dialogue between the EU and Ukraine for at least two reasons. First, if Ukraine signs the document, it means it will be taking formal obligations to fulfil the EU's political standards. This provides a basis for the EU to use stronger political conditionality in the near term (signing the agreement does not mean it's enacted since ratification by each EU member state is inevitably needed to complete the process, and success for that is doubtful until serious objections regarding the quality of Ukrainian democracy are dropped). Second, when the Association Agreement is signed, its text can finally be published, thus providing material for substantial and open discussion regarding the benefits of its ratification. This will strengthen the pro-European aspirations of Ukrainian society and thereby exert more significant influence on the authorities' efforts to integrate with the EU.

Regardless of the outcome of negotiations on the Association Agreement, the EU should develop instruments—both educational and financial—to support small and medium businesses in Ukraine within the budgetary framework of the European Neighbourhood and Partnership Instrument. An educational element can contain training about the principles of operation of SMEs in the EU's internal market. A financial element can be based on experience with EU internal programs supporting the establishment and development of SMEs. Entrepreneurs of small and medium enterprises can become a basic social group supporting Ukraine's economic integration with the EU. Strengthening this group would be beneficial not only for Ukraine's economy but also for the development of Ukrainian democracy.

¹ More about Russia's projects of economic integration: Anna Maria Dyer, "Russian Proposals for Economic Integration in the CIS Region and European Prospects for Belarus", PISM Bulletin No. 107 (856), 23 November 2011.