

## The Ukraine Question

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4 April 2012

On 30 March 2012, senior officials of Ukraine and the European Union met in Brussels to initial the text of an Association Agreement (AA) between the EU and Ukraine, and also the Deep and Comprehensive Free Trade Agreement (DCFTA) as an integral part of the package.

'Initialling' signifies that the negotiations over the text have been concluded and agreed. However thus far there is no binding commitment. With signing there is a political commitment, but only after ratification is it legally binding.

However the broad outlines of these agreements can be predicted. The AA will provide for a wide-ranging agenda for future cooperation as well as the framework for extensive political dialogue, with some crucial political language at the beginning, like the EU welcoming Ukraine's 'European choice' or 'aspirations'. The Ukrainian side has been pushing for language acknowledging Ukraine's 'membership perspective', but there has been no consensus among EU member states to agree this formulation. The DCFTA will doubtless provide for a phasing out of all industrial tariffs, with a limited opening of agricultural markets (zero tariff for some commodities, but only tariff-free quotas for some others). The two last sticking points in the negotiations seem to have been precisely the choice of political language (as above in inverted commas, or other variants), and the size of the tariff-free quotas for certain agricultural products. Otherwise the DCFTA will have a comprehensive agenda for Ukraine to align many technical standards and regulations on EU norms, and thus to eliminate many non-tariff barriers for goods and services.

Meanwhile, during the long period of negotiation of the AA and DCFTA, much has been happening in domestic Ukrainian politics and economics. Viktor Yanukovich became President in February 2010, but since then his political popularity has dropped to very low levels. Politically he is seen as sliding back towards an authoritarian regime buttressed by support from a group of oligarchs whose interests are deeply entangled with the government, and by manipulation of the judiciary to political ends. The imprisonment of Yulia Timoshenko is the *cause célèbre* on the latter point, but far from the only case of politically motivated imprisonment. The economy is in deep trouble too. Loans from the IMF and EU have been agreed in principle, but their disbursement is on hold because of non-fulfilment of economic policy conditions.

The initialling of the AA and DCFTA now prompts the question when these texts will be signed, and on what conditions. One view that seems to be circulating in EU circles is not before the next EU-Ukraine summit, scheduled for December 2012, which would make it

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possible to see how the parliamentary elections to be held in October will be managed. In addition, there is the view that release of Yulia Timoshenko from prison should be a precondition.

However this is not the only view. Another proposition is that signing should be done without such a long delay or preconditions. If Yanukovich displays no serious interest in implementing the AA or respecting the political values built into it, the EU still has the ratification process in hand. The conditionality instrument is not lost.

The case for the one or other course of action is quite complex, with substantial arguments on both sides.

The arguments for delay with serious conditionality seem to be the following:

- A/ to avoid giving a political present to Yanukovich, helping his party's prospects in the forthcoming parliamentary elections,
- B/ to put pressure on Yanukovich to permit free and fair elections,
- C/ to help get Yulia Timoshenko and others out of prison.

On the other hand, the arguments in favour of swifter signing would be the following:

- A/ to lock Ukraine in with treaty-level commitments,
- B/ to provide encouragement and reference texts to Ukrainian civil society and reform-minded groups, and avoid creating the sentiment in public opinion that the EU is abandoning Ukraine, which links to the final consideration ....
- C/ to avoid giving Putin the time and opportunity in which to exploit Ukraine's evident vulnerabilities, in order more precisely to get Yanukovich to agree to join the Russian-led customs union, which would mean torpedoing the AA and DCFTA with the EU.

Since all these arguments have some plausibility, which of them should be decisive for the EU's political choice?

The fundamental issue is how far the EU should employ political conditionality in its external relations, and notably in cases where there is no membership perspective at stake, and where other powerful external actors pursue their objectives without regard for the same political norms.

The EU has had little difficulty agreeing these days to sanction both Belarus and Syria. But these are five-star pariah states. Ukraine may be sliding into a more authoritarian mode of government, but it is far from being a Belarus, and of course even less a Syria. Many countries in the European neighbourhood fall into intermediate political regime categories, far from high European standards of democracy, including all three South Caucasus states and almost all the Arab world – even today after the Arab Spring. Turkey also is sliding towards greater authoritarianism.

There is the inescapable issue for all proponents of tough EU political conditionality of understanding correctly the balanced cost and benefits for the partner state to acquiesce to EU conditions. When the context is one of acknowledged membership perspective, the incentive is big in political and economic terms, and the democratic legitimacy of the process is also clearly established. The first-best option in the case of Ukraine would be indeed to grant the consistently requested membership perspective. Regrettably, the EU has not yet been able to agree this. Without this membership perspective, the cost-benefit ratio for incumbent regimes to change political course will not look impressive, in particular for partner states that are somewhere in the middle ground between high-quality democracy and the pariah dictatorship or failed state.

And then the costs and benefits of responding to the offers of other major powers has to be added to the equation. China is nowadays offering huge sums of money all over the world accompanied by zero political conditionality and an explicitly anti-conditionality doctrine known as 'non-interference'.

But closer to home for Ukraine is Russia, whose game is clear enough. Putin, in his recent election campaign, has set re-integration of the post-Soviet space as an explicit priority. The instruments for this strategy are widening of the customs union of Belarus, Kazakhstan and Russia and development of the EurAsian Economic Area. In addition, we have a fairly clear view of Putin's negotiation methods, which easily slip into the category of the semi-coercive. In Russia's dealings with Ukraine, the gas price, pipeline politics and finance are the trump cards. When Yanukovich agreed a long-term extension of the lease for the Sevastapol naval base soon after taking office in 2010, the only counterpart was a short-term discount on the gas price. Currently Russia pushes for joint ownership of the gas pipeline network in Ukraine, while at the same time building competing projects to weaken Ukraine's strategic positioning in this sector (the North Stream now built, and the South Stream planned). Ukraine is now in fairly desperate need of macro-financial assistance, with funding from both the IMF and EU available in principle but on hold because of non-fulfilment of conditions. Russia pushes Ukraine over possible accession to its customs union, which Ukraine so far rejects. And so, quite reasonably, its first-best solution, both economically and politically, would be to have free trade agreements with both. Ukraine already has a free trade agreement with the CIS, and has now initialled the DCFTA with the EU. If in these circumstances, Russia pressures Ukraine to join the customs union, this would amount to crude geo-political semi-coercion, with a view to torpedoing EU-Ukraine relations.

More constructively, Putin has also been arguing recently for a mega free trade area from Lisbon to Vladivostok as a long-term project. While it remains to be seen whether this is a serious idea or just for show, the EU should signal its interest in this, while joining with Ukraine in rejecting firmly the Russian customs union proposal. To make this absolutely clear, the EU should press ahead and sign the AA and DCFTA without delay. Leave the resolution of political conditionality matters for the subsequent ratification period.