



BULLETIN

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The Likelihood of an EU Association Agreement with Ukraine in 2013

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By the 3rd Eastern Partnership summit in November 2013 there is a chance that an Association Agreement between the European Union and Ukraine, negotiated in 2011, will be signed, although the continuation of socio-economic reforms and improvement of democracy in the country remain among the necessary preconditions. Polish efforts to bring Ukraine closer to the EU should focus on persuading the Ukrainian authorities to take concrete steps on reforms and the democratisation of the country.

On 25 February 2013, an EU–Ukraine summit will be held in Brussels. One of its main topics most probably will be whether an Association Agreement can be signed this year. At the beginning of the year, President Viktor Yanukovich declared that signing the document, which provides a basis for far-reaching economic integration with the EU through a deep and comprehensive free trade agreement (DCFTA), remains a priority of Ukrainian diplomacy. Nevertheless, it is uncertain. The use of non-democratic methods that limit the rights of the opposition in Ukraine was cited in a recent OSCE report and remains a major obstacle from the EU's perspective to signing the agreement.

The European Union's Position. The EU Member States hold different positions on signing an Association Agreement with Ukraine. Many states, including Sweden, Finland, Denmark and the Netherlands, remain sceptical and refer to the need for fundamental European values and proof of why the EU should allow further integration with a country that violates the principles of democracy when it comes to the rights of the opposition. Removing the block on the agreement has been conditioned on the release of former Prime Minister Yulia Tymoshenko and former Interior Minister Yuriy Lutsenko from prison. However, Poland, Lithuania, Czech Republic and Slovakia have declared their readiness to sign the agreement. The positions of France, Germany and the UK remain uncertain.

Because of a lack of consensus among the European Council since negotiations ended on the agreement at the end of 2011, the EU has consistently avoided any explicit statements about the prospects of signing the Association Agreement, waiting for Kiev to take steps in order to improve the state of democracy. Although it was emphasised in early 2012 that this decision may depend on the quality of elections in October, a critical, but careful evaluation of the ballot by the OSCE made it difficult to use this argument in further negotiations. In December 2012, the Council confirmed its readiness to sign the Association Agreement by the time of the 3rd EaP summit (scheduled for November 2013) on the condition that the Ukrainian side delivered concrete progress in three areas: improvement of the electoral system to increase the transparency of the voting process, reform of the judiciary, and introduction of reforms needed to implement a DCFTA (including fighting corruption and reforming public finances). Importantly, if a compromise regarding the Association Agreement with Ukraine is not reached, there is a risk that the whole process will be significantly delayed. Because of the elections to the European Parliament in 2014, and a related change to the European Commission, the decision-making process will be slowed and some in the EU will have another argument to block further dialogue.

Ukraine's Position. The Ukrainian authorities declare their willingness to continue cooperation with the EU, but at the same time are not willing to agree with the EU on the matter of the rights of the opposition. They consistently reject allegations that the ruling authorities repress political opponents and are not looking for a quick solution to the

controversial cases of Tymoshenko and Lutsenko. The authorities probably consider the release of the two opposition leaders to be too risky because the recent parliamentary elections did not give the ruling Party of Regions enough of a mandate (the party failed to gain a constitutional majority, which is necessary to introduce changes in legislation before the upcoming presidential elections in 2015). This could be interpreted as an admission of non-democratic practices.

Despite the Ukrainian authorities' declarations about speeding up work on signing the Association Agreement, significant progress in the implementation of reforms demanded by the EU remains uncertain. The previous experience of relations between the EU and Ukraine shows that the country has often adopted the required legislation, but has had problems with implementing it. For example, the implementation of a newly adopted criminal procedure code will be important to meeting the EU's demand for judicial reform. This is going to be a long-lasting process. When it comes to reform of public finances there are problems with long-term budgetary planning and effective control of public expenditures. At the same time, there is a lack of political will to take on the fight against corruption, which is high according to international NGOs. Ukraine placed 144th in the world in terms of the Transparency International Corruption Perception Index.

The chances that reforms will be implemented soon are also lessened by the serious economic difficulties faced by Ukraine and which largely determine the country's foreign policy. Ukrainian authorities continue to look for new sources of financial aid, though the conditions attached to those funds may appear contrary to the EU's DCFTA principles or will not contribute to the implementation of EU demands. Thus, an Association Agreement and DCFTA with the EU is not perceived by Ukrainian authorities as a strategic direction for the country's development in the near future. Instead, the agreement is regarded as a tool to achieve short-term political objectives, for example to improve the country's economic situation, which would support the re-election of President Yanukovich in 2015. The more likely scenario for this agreement is that the authorities in Ukraine are counting on a long-lasting process to implement the DCFTA rules, allowing the country's gradual adaptation to the changing regulatory environment. Importantly, the Ukrainian authorities have distanced themselves from participation in the customs union that includes Russia, Belarus and Kazakhstan. At the current stage of Ukrainian–Russian dialogue, the Ukrainian authorities have excluded full membership in the organisation, although attempts are being made to establish some forms of cooperation with Russia that would not be inconsistent with the creation of a free trade area with the EU. This approach may be explained by the fact that the majority of large Ukrainian financial and industrial groups regard enhanced cooperation with the EU as less of a threat to the well-established relationship between the government and businesses than would joining the Russian integration projects.

Conclusions for Poland. Both the EU and Ukraine have declared their willingness to sign an Association Agreement by the time of the EaP summit in November 2013. However, both sides' motivations are different. Taking into account Ukraine's complex political and economic situation, one should not expect significant progress in implementing the reforms expected by the EU. Partial implementation is possible, however, and would give an argument in favour of signing the Association Agreement. In this situation, the decision on signing the document will be political in nature. Polish diplomacy should focus on the facilitation of dialogue between Ukraine and individual Member States with the objective being to exchange information on the reforms implemented by the Ukrainian government in the current year. In informal dialogue, it is worth referring to the results of the extended observation mission led by former President Aleksander Kwasniewski and former EP President Pat Cox. Thanks to its legal staff, the mission reports are an important source of objective information about controversial court cases in Ukraine and the actual state of its judiciary.

In the dialogue with the Ukrainian authorities, one should emphasise that the EU has to receive a clear signal from the Ukrainian side of its willingness to cooperate in the form of concrete steps to implement the required conditions. Taking into consideration new allegations presented against Tymoshenko, it is necessary to suggest that the Ukrainian authorities should focus primarily on judicial reform, according to the EU Council conclusions of December 2012.

In its contacts with the Ukrainian opposition, Polish diplomats should pay attention to the need to find a compromise between all major Ukrainian political forces regarding strengthening cooperation with the EU. It should be emphasised that signing an Association Agreement would mean Ukraine's commitment to the EU's political and economic standards, regardless of which political force would be in power in the future.