



BULLETIN

No. 52 (505), 17 May 2013 © PISM

Editors: Marcin Zaborowski (Editor-in-Chief) • Katarzyna Staniewska (Managing Editor)
Jarosław Ćwiek-Karpowicz • Artur Gradziuk • Piotr Kościński
Roderick Parkes • Marcin Terlikowski • Beata Wojna

EU–Ukraine: The European Commission on an Association Agreement

Piotr Kościński

The European Commission has asked EU Member States for a mandate to sign a Ukraine–EU Association Agreement during the Eastern Partnership Summit in Vilnius (November 2013) if the country meets EU conditions. It has also suggested that even before the summit the trade part of the agreement (DCFTA) may come into force. The final decision may be taken at a meeting of EU foreign ministers in October. Poland should persuade the authorities of Ukraine to fulfil the European Union’s requirements by showing the tangible benefits that could result from it. At the same time, Poland should indicate to its partners in the EU that signing this agreement also will be positive for the Union, from both economic and political points of view.

The Political Situation in Ukraine. Disputes between Ukraine’s ruling Party of Regions and the opposition continues. Opposition leader Yulia Tymoshenko is still in prison. An investigation into her alleged involvement in the murder of businessman and politician Yevhen Shcherban in 1996, suspended in April, was resumed on 13 May. Government officials claim that it’s impossible to pardon Tymoshenko before the end of this investigation (along with another charge, misappropriation of public funds intended for the United Energy Systems of Ukraine, as well).

The issue of the cancellation of provisions concerning criminal responsibility for political decisions still remains unresolved. An important event happened, however, on 7 April. President Viktor Yanukovich signed a decision to pardon Yuri Lutsenko, the former interior minister in Tymoshenko’s government who had been sentenced to four years in prison for the alleged embezzlement of state funds and abuse of power (however, the pardon is not a gesture towards the opposition but only a response to calls from the EU).

Although Lutsenko is out of jail, that did not ease tensions between the government and the opposition. Lutsenko will definitely strengthen the opposition, although Yanukovich did not repeal the ban on Lutsenko holding public office. Although the former minister said he would not claim to be the next leader of the divided opposition, he announced the creation of a new group (a social movement, not a political party).

Recently, the Party of Regions has focused on attacks against the nationalist party Svoboda, claiming that it is “neo-fascist” or even “neo-Nazi”. Other opposition parties were criticised for collaborating with Svoboda. Large-scale pro-government “anti-fascist” demonstrations are planned, mainly in the east and centre of the country. This may lead to a deepening of divisions as western Ukraine traditionally supports the OUN (Ukrainian Nationalists’ Organisation), which its UPA (Ukrainian Insurgent Army) of the pre-war and wartime period, while the east recognises to some extent the tradition of the Ukrainian Socialist Soviet Republic.

The European Union and Ukraine In mid-April, former Polish President Aleksander Kwaśniewski and former European Parliament President Pat Cox presented a report on their activities as part of a mission sent by the European Parliament to Ukraine. The positive evaluation of this report to the EU resulted in an extension of their mission. This report was one of the reasons why the European Commission has decided that the Association Agreement can be signed at the Eastern Partnership summit in Vilnius in November. Although politically important (the EC certainly favours agreement), the decision was described as “technical”. It emphasized that the final decision on ratification of the agreement will be taken by the Member States and noted that the signing will take place if Ukraine fulfils the relevant conditions. The Commission intends to monitor the activities of the Ukrainian side.

The EC also announced that a Deep and Comprehensive Free Trade Agreement (DCFTA), which is part of the Association Agreement, can enter into force before the signing of the latter (which is possible under EU law). This would mean *de facto* integration of the Ukrainian and European economies.

The Association Agreement is key to determining the future of EU–Ukraine relations. It was initialled in March 2012, but so far has not been signed or ratified. The main reason for postponing ratification has been the political situation in Ukraine, in particular the imprisonment of Tymoshenko. The European Commission concluded that her trial was an example of selective application of the law and called on Ukraine to proceed with changes in criminal law and trial procedures to eliminate the use of it against the opposition. The EC also calls for reform of the electoral system to ensure democratic and fair elections. After the last election, the Central Electoral Commission (dominated by government representatives) annulled the vote in five single-seat constituencies, which the opposition insists was done so anti-government politicians would not be elected.

It was Kwaśniewski and Cox who dealt with reforms of Ukraine’s legal system (technically, it was an observer mission to study the legal proceedings against Tymoshenko, Lutsenko and other opponents of the government). Unofficially, however, both politicians during their talks explored the possibility of obtaining the release of Tymoshenko and Lutsenko, and their actions led to Lutsenko’s freedom.

The Future of the Association Agreement. The talks on the Association Agreement have gained speed recently. Representatives of the highest Ukrainian authorities and the opposition have visited Brussels. They talked about the progress made in implementing the recommendations of the EU and about Ukraine’s timetable for further action in this regard.

The EC sees progress on the Ukrainian side, but also sees some threats as well. For example, while the Ukrainians are working on reform of the legal system, they are going about it quite slowly. In effect, the changes in the penal code may not enter into force before the Eastern Partnership summit in Vilnius.

Within the EU, views on the agreement with Ukraine are still varied. Some EU politicians (such as the German Christian Democrats) are very reticent to meet Ukrainian aspirations for integration with the EU. They argue that Ukraine, despite gestures such as the release of Lutsenko, has not carried out the required reforms nor has it really moved towards democracy. They also stress concerns that after signing the Association Agreement the Ukrainian authorities may not implement its provisions. If these politicians stick with the strict condition that Tymoshenko be freed before the signing of the Association Agreement, there would be no chance for it.

Another factor in the future of the agreement is Russia, which so far has unsuccessfully put pressure on the authorities in Kiev to join its Customs Union and endorse other Russian integration projects, instead of looking to the EU. The Russians may continue to push Yanukovich to give up the Association Agreement. They can use well-known instruments, such as the price of gas exported to Ukraine, to do this. They can also try to use the large community of Russians in Ukraine to motivate its leaders.

Conclusions and Recommendations for Poland. Polish authorities should step up their dialogue with the Ukrainian authorities at the highest levels to persuade them to fulfil the EU’s requirements for changes in criminal and procedural law as well as electoral law, and to proceed with other activities that are necessary for integration with the European Union. Since the release of Tymoshenko is unrealistic in the short term, there is the necessity to put pressure on the Ukrainian authorities to make her imprisonment less difficult, especially in light of her ongoing illnesses (though this does not exempt Polish authorities, and more broadly, the EU, from further efforts to release her). New scenarios should be found that are acceptable to both Tymoshenko and Yanukovich, including a temporary solution such as allowing Tymoshenko’s maladies to be treated outside Ukraine.

It is also important to persuade the opposition not to make any attempts to block the signing of the Association Agreement with the EU even though it might be useful to do so for short-term political goals. Such actions may be expected from representatives of Tymoshenko’s *Batkivshchyna* opposition party, which is an associate member of the European People’s Party. It must be emphasized that the agreement with the EU will force Ukraine to make changes in its law as it adopts the *acquis communautaire*, which will democratise electoral and criminal law and behaviour of representative bodies.

Poland should also persuade those members of the European Union who are more or less sceptical of Ukraine’s agreement with the EU. It would be useful to conduct a detailed economic analysis, including how the creation of a free trade zone with Ukraine would affect the economy of the country and individual EU Member States in both the short and long terms. Poland and the Member States should also consider and propose a monitoring system for Ukraine’s implementation of the provisions of the Association Agreement. The Ukrainian side should know that its actions will be visible to Brussels—and EU politicians should believe that Ukraine cannot hide anything.

It might also be positive if Kwaśniewski, with his strong role at the moment, could serve as mediator with Ukraine in the future. Yanukovich stressed that Lutsenko was released after the appeal by the former president (along with Cox), which shows the strength of the Polish politician.