



BULLETIN

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Vilnius Summit: Keeping the Association Agreement on the Table

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Despite the Ukrainian government's decision to "suspend" its signature of the Association Agreement with the EU, it should remain on the table during the upcoming Vilnius summit. Ukraine had achieved partial progress on the three conditions set by the EU for signing an Association Agreement. However, Ukraine's government used Russian pressure as an excuse to dodge signing the agreement. The EU should seize the opportunity and use the Vilnius summit to do what it does best: start a mediation process between the authorities and the country's pro-EU civil society.

Turmoil in Kiev. In the past year, EU policy towards Ukraine has been guided by the conditions for signing an Association Agreement (AA). On 10 December 2012, the Council of the European Union issued conclusions stipulating that the EU would sign the agreement if Ukraine's authorities demonstrated the political will and visible reform in three key areas: address cases of politically-motivated convictions and reform of the judiciary; correct violations incurred during the 2012 parliamentary elections and improve its electoral legislation; implement reforms under the Association Agenda.

Meanwhile, Russia had intensified its bilateral talks with Ukraine, with the presidents of the two countries meeting to discuss economic relations. Although the content was not directly disclosed, these talks are likely to have focused on potential incentives for Ukraine and sanctions by Russia related to the Association Agreement. The leaders of EU Member States, however, had retained a rather cautious position regarding these meetings, most notably, German Chancellor Angel Merkel, who announced that the EU would provide economic support to Ukraine if it fulfilled all the criteria for the agreement. However, the standstill abruptly changed dynamics when Ukraine's government announced on 21 November that it had "suspended the preparations for the signature of the Association Agreement," followed by similar hints from the president. Arguably, this decision pursues two goals. On the one hand, Ukraine's elites are attempting to avoid Russian pressure immediately after Vilnius, which could damage their political standing. On the other hand, such a "change of heart" is also an attempt to elicit further concessions from the EU in the longer run.

The government's announcement provoked a public backlash when more than a hundred thousand people took to the streets to demand Ukraine sign the Association Agreement, organised as a movement called EuroMaidan. The growing geopolitical stand-off over Ukraine and the massive pro-EU movement in Ukraine highlight a dilemma for the EU: should it press for signing the Association Agreement under the current conditions or accept the government's decision to postpone it?

Selective Justice. For the past year, the authorities have made only partial progress in addressing politically motivated imprisonments. President Viktor Yanukovich granted pardons to ex-ministers Yuri Lutsenko and Georgiy Filipchuk, but declined to pardon former Prime Minister Yulia Tymoshenko, who was imprisoned on charges of abuse of power in 2011. A ruling by the European Court of Human Rights declaring the "unlawful detention" of Tymoshenko entered into force in July 2013, but Ukraine has since failed to address this issue through its domestic court procedures. Although the EU monitoring mission headed by Aleksander Kwaśniewski and Pat Cox requested Yanukovich pardon Tymoshenko on humanitarian grounds, Ukraine's president insisted on waiting for relevant legislation from parliament.

Ukraine's authorities, however, resorted to a "two-level game" in order to disrupt the draft legislation that would have allowed Tymoshenko's treatment abroad. The ruling party declined support for any of the four draft laws submitted to parliament, allegedly due to their poor technical quality. Little progress has been achieved in the working group set up to negotiate a common draft law on conditions for convicts' treatment abroad. So far, no draft law has been finalised, let alone brought to parliament. Coming short of its goal, the monitoring mission was terminated.

Hence, the authorities considered keeping Tymoshenko in prison as a way to preserve negotiation leverage amid what they consider a "rift" in the positions of the EU Member States, while winning time for Yanukovych to conduct side negotiations with Russia.

Electoral Reform. The 2012 parliamentary poll unveiled major irregularities in the electoral process, including monopolisation of access to the media, use of administrative resources by pro-government candidates in the first-past-the-post districts, and the unfair representation of political parties in electoral commissions. The Central Electoral Commission had failed to establish poll results in five electoral districts. In compliance with the EU Council conclusions, the Ukrainian parliament adopted a law declaring new elections in those five districts, now scheduled for 15 December 2013.

Ukraine's authorities have shown a mixed record of reform in the prevention of these irregularities. The draft law on changes to electoral legislation was passed in the second reading on 21 November and awaits the president's signature. On the one hand, some positive amendments on financing rules have been introduced, such as ceilings on party election funds and a lower deposit threshold, that could benefit smaller political parties. However, some changes might complicate election oversight, for example, while the draft allows the participation of observers from NGOs, it prohibits observers from acting against such violations, even through legal channels.

Last, Ukraine's authorities adopted legal changes undermining political competition. At the end of October, the parliamentary majority passed amendments to the tax code, with one such change declaring that a citizen who holds or has recently held a residence permit from another country is a non-resident of Ukraine. Vitali Klitschko, the former boxer and an opposition politician who had previously held a German residence permit, might be excluded from the 2015 presidential election, as Ukrainian law requires a candidate to have resided in Ukraine for at least 10 years. To address this change to the tax code, Klitschko publicly announced his intention to run for the presidency, but the amendments were signed into law by President Yanukovych thereafter, hence, there are risks that the legal uncertainty may cause "selective access" to the 2015 elections.

Association Agenda. Ukraine has made tangible progress in three out of the nine areas of the Association Agenda mentioned by the Council conclusions. First, the new Criminal Procedure Code has been in force for more than a year. A national preventive mechanism against torture was implemented successfully, but regular visits to penitentiaries require more funding. On the other hand, the lack of action to establish a State Bureau of Investigations, stipulated by the code, shows the government's unwillingness to embark on reforms that carry political risk.

Second, legal reform progress has been fragmentary. The Draft Law on the Public Prosecutors Office, passed on first reading on 8 November, had been considered a "significant advance" by the Venice Commission, although the political dependency of the Prosecutor General remains a major drawback.

Finally, a range of issues in the Association Agenda have yet to be addressed. The reform of public finances requires amending the corruption-prone provisions of the law on public procurement passed in 2012. This could be done by adopting amendments requiring mandatory publication of information on purchases by state-owned enterprises, which were submitted to parliament but have not yet been heard. Also, Ukraine's government has failed to draft a programme for DCFTA implementation. This slow progress is explained by a lack of consistent incentives for the government to reform given that the ultimate decision hinges on the political will of one person.

Recommendations. Several days before the Vilnius summit, Ukraine has achieved partial compliance with the conditions outlined by the 2012 Council conclusions. Given the EU's insistence on progress on all of the criteria and facing imminent risks of retribution from Russia, Ukraine's leadership felt dangerously cornered by the EU and Russia. Therefore, the authorities resorted to disrupting the association process in an attempt to elicit potential concessions from the EU and avoid making decisions laden with risk because of Russian pressure. As Ukraine has not fully met the EU criteria, its leadership may well attempt to force the EU disregard politically sensitive criteria in any post-Vilnius negotiations.

The mass protests in major Ukrainian cities, however, now serve as upward pressure on both Ukraine's government and the EU. This would require both parties to negotiate on gradual steps demonstrating commitment to the AA following the Vilnius summit, even despite the current regime's consistent propensity to renege on its promises. In light of the civil society developments in Ukraine, the EU Member States, including Poland, should keep the promise of the EU's signature on the condition that Kiev fulfils the outstanding criteria afterwards.

Such an offer would somewhat narrow the scope for Ukraine's future ability to manoeuvre and reassure the country's pro-EU majority of the EU's intentions. Considering Ukraine's dire economic situation and the prospects for Russia resuming trade restrictions against Ukrainian exporters, the offer of a provisional application of the DCFTA and macro-financial assistance should be reiterated to the Ukrainian public. This model of "gradual steps" might help mitigate the differences between the EU and Ukraine's authorities, while sending a clear signal of support to the EuroMaidan activists as they stay on the streets during the summit in Vilnius.