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Ukraine Before Vilnius: Who Blinks First?

by *Stanislav Secrieru*

Introduction

At the Eastern Partnership (EaP) Summit at Vilnius later this month, Ukraine could be the first to sign the Association Agreement (AA) and the Deep and Comprehensive Free Trade Agreement (DCFTA) with the European Union, out of the six countries at which the Partnership is aimed. The signing and ratification of these two agreements will have numerous political and economic medium- and long-term consequences for Ukraine, its EU neighbors and EaP member states, particularly Moldova. The political and economic association of Ukraine with the EU will affect the dynamics of the Russia-EU-Ukraine triangle and indeed the future of the post-Soviet space. As some European diplomats remark, the Vilnius Summit is not about Ukraine but about Russia, and the real goal is to suppress Russia's imperial urges.

Two weeks before Vilnius, however, a pessimistic scenario ("lose-lose-win") is still possible, where: 1) Ukraine does not sign the AA/DCFTA agreement and authoritarian tendencies escalate while the economy stagnates in a regional environment less auspicious for a multi-vector foreign policy; 2) EU policy in the neighborhood suffers a defeat at this stage, placing in question the overall success of the EaP; and 3) encouraged, Russia doubles the pressure on Moldova and Georgia to hinder the signing of the AA/

DCFTA agreement in autumn 2014. The outcome of the Vilnius summit for Ukraine is still unclear. A single controlled or uncontrolled leak of the high level discussions carried on these days between Ukraine and the EU on the release of former Prime Minister Yulia Tymoshenko from prison could overturn any calculations. Beyond a possible unexpected change in the current situation, which would open the way to signing the agreement with Ukraine at Vilnius, developments on three different levels make a pessimistic scenario highly plausible.

Government and Opposition: Do Not Trust Anyone

At the headquarters of both the opposition and government parties in Kyiv there is a declared unanimity on the imperative of signing the AA/ DCFTA agreement in Vilnius. The only parliamentary group opposing is the Communist Party. This is the second time in the post-Soviet history of the country, after the territorial dispute with Russia in 2003 over the Tuzla Island in the Kerch Strait, when there is a large political consensus over one foreign policy issue. This unanimity disintegrates, however, around what has become EU's most talked about condition to signing the AA/DCFTA agreement: the issue of Tymoshenko's release.

The opposition claims it is ready to accept any solution proposed by the



ruling Party of Region: amnesty, pardon, de-criminalization of the provision in the Penal Code under which Tymoshenko was sentenced, or sending her for treatment outside the country (Germany to be precise). They believe President Viktor Yanukovich does not want to pay the political price for the AA/DCFTA agreement, as Tymoshenko's release will change the balance of power to his detriment and would make him a weak politician in the eyes of the voters. To avoid this, the Party of Region argues that the decision should be consensual, and the responsibility be shared by all parliamentary parties and not by the president alone. They accuse the opposition of blocking the decision in the Rada (parliament). Hence both the ruling party and the opposition denounce each other's hypocrisy about their desire to sign the agreement in Vilnius, and pass the responsibility for the current blockage back and forth between themselves. The parties seem to be preparing to accuse each other for a possible failure in Vilnius, and have apparently engaged in a game of "who blinks first," where electoral calculations count more than the signing of the AA/DCFTA agreement.

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In an effort to appeal to the electorate of the opposition, Yanukovich has molded himself into the main European integration force in the country. Local TV news leaves the watcher with the impression that the Vilnius summit is about full membership in the EU, and not only about the AA/DCFTA agreement. The populist messages promising lower prices and higher pensions after the signing of the AA/DCFTA agreement raise dangerous, false expectations in the citizens. These actions ultimately discredit the idea of European integration and, given the unfavorable dynamic of the Ukrainian economy, which barely affords payment of salaries and pensions at their current level, will most likely weaken the position of EU integration advocates in the months to come. Yanukovich is pursuing an ideal scenario that would allow him to be the front runner in the 2015 presidential elections, specifically: 1) Yulia Tymoshenko either in jail or under treatment abroad yet in European guaranteed *silenzio stampa* and conditioned to return to jail

upon completion of treatment; 2) the AA/DCFTA agreement signed in Vilnius; and 3) an agreement with the EU and the IMF to stabilize the economy signed soon after. In order to achieve all these, Yanukovich is avoiding any concrete solution on Tymoshenko until the last minute, while, as usual, looking to the East for a plan B, should the situation require one.

Ukraine-Russia: A Plan "B" on the Horizon?

In an ideal world, the one described by Russian leaders in the foreign media, Russia should not be concerned by the Ukraine-EU association. In 2010, President Vladimir Putin, under the "Greater Europe" label, resurrected the idea of a free trade zone from Lisbon to Vladivostok. Looked at from this perspective, the AA/DCFTA agreement between Ukraine and the EU constitutes only a step further in this direction, as noticed by European Commissioner for Enlargement and European Neighbourhood Policy Stephan Fullé. Russia's opposition to the Ukraine-EU agreement shows not only the emptiness of the Russian discourse but also the weakness and vulnerability on its part. As European diplomats have observed, Russia does not want success stories in its vicinity because Russia itself is not a successful state. The Moscow version of a Greater Europe has Russia as the gravitational center of this mega-structure in the post-Soviet space, institutionalized through the Eurasian Union (EAU). According to this line of reasoning, Ukraine has to advance toward Europe not as an independent state, but at the same pace with Russia and under Russia's purview. At the beginning of 2000, Moscow promoted the slogan "In Europe together with Russia" for precisely this purpose. Russian Ambassador to the EU Vladimir Chyzhov openly admits that Moscow would prefer direct negotiations between the EU and EAU and not between EU-Ukraine-EAU.

After the 2010 Ukrainian presidential elections, Russia demanded that Ukraine replace some of its ambassadors to key capitals. Then-newly elected Yanukovich complied in order to revamp relations between the two countries and his with Putin. After a brief recovery, the personal relationship between the two presidents has grown more tense, in particular with Russia's recent pressures on the Ukrainian economy meant to discourage its association with the EU. Yet Ukrainian officials never changed their tone in rhetoric



vis à vis Russia, and Yanukovich continues to keep his Eastern options open.

It is important for Yanukovich to keep the communication channel with Russia open for several reasons. First, his feared opponent Yulia Tymoshenko is apparently communicating with Moscow. And should the EU option fall through, Yanukovich will want to enlist the support of Russia in the 2015 elections, even if this will entail further concessions. Second, even if they don't like each other, Putin and Yanukovich speak the same post-Soviet language. Putin's tête-à-tête explanations that the EU wants to sign the AA/DCFTA agreement in order to weaken Yanukovich and prevent him from winning the 2015 elections may still better resonate with the Ukrainian president than the speeches about European values emanating from Brussels. Third, some Ukrainian oligarchs are regular visitors to Moscow, and are trying to maintain their preferential access to the Russian market, despite economic pressures, while frequently acting as communication channels on Moscow to Kyiv. Fourth, the energy dependence from Russia (albeit reduced in the past two years) is directly linked to the financial stability of Ukraine. In early November, Standard and Poor's downgraded Ukraine's credit rating, indicating a precipitated reduction of the national reserve (from \$32 billion in 2012 to \$21 billion in October 2013) as well as the uncertainty regarding its ability to finance its sovereign debt in 2014. Therefore, no matter what happens in Vilnius, Ukraine will need money to repay its debt and to continue to subsidize gas prices for household consumers. The country's economy, as well as the success of the 2015 campaign, are hinging upon this.

Under these circumstances, the efforts to keep the relationship with Russia as functional as possible are not

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surprising. Commenting on the meetings between the two presidents in Sochi, an EU official remarked: "We are under the impression that Ukraine is thinking about a plan B." Yet it is unlikely that Ukraine would want a "plan B" that involves full membership in the Russia-Belarus-Kazakhstan Customs Union, as this would come at a high economic price that would need to be compensated by Russia, which is reluctant to do so. A Ukrainian official explains: "If we joined the Customs Union, we would have to raise custom fees for goods from outside the union, and Russia will have to pay compensations to the WTO. The EU compensated us when Croatia became a member. Is Russia prepared to do the same? I doubt a signal in this direction could be given if Armenia enters the Customs Union." Still, some concessions made by Ukrainians in hope of consistent help given if needed are not to be excluded. To this end, Prime Minister Mykola Azarov has recently announced Ukraine's intention to join some of the Customs Union sectorial agreements, yet it remains to be seen if Russia will accept anything less than Ukraine's total commitment. Moreover, Yanukovich's trust of Putin has suffered considerably after the latter tricked the former into extending the lease to the Russian fleet in Crimea in exchange for a dubious reduction in natural gas that actually left Ukraine paying more per cubic meter than Germany. From this perspective, the EU and its contractual philosophy may seem a more reliable partner for Yanukovich.

Ukraine-EU: Lost in Translation

In 2007, the EU launched negotiations with Ukraine regarding the AA/DCFTA agreement. In 2011, after the election of Yanukovich and imprisonment of Tymoshenko, negotiations were finished, but because of the latter, the signing of the agreement was postponed indefinitely. Since then, numerous public and confidential messages have been sent, signaling clearly that the EU would not sign the agreement should Tymoshenko not be released, yet Ukrainian representatives still believe this is not EU's final position on the matter. During a study tour to Ukraine organized by the German Marshall Fund of the United States in early November, one of the top leaders of the Party of Regions declared: "We understand the EU plays hardball and they came forward with tough conditions. We are also playing tough and presented our proposals. To reach an agreement we will have to meet in the middle." The state of mind in which the Polish and Swedish foreign ministers left Kyiv



after their official visit confirms Europe's exasperation with Ukraine's intransigence. To add to this, it is possible that the meeting in Sochi between Yanukovich and Putin and the consequent one in Moscow were partially meant to put pressure on the EU and cause jealousy. It seems that Kyiv perceives the condition of Tymoshenko's release as nothing more than a bluff, a position that can eventually be reversed. To this end, Polish Foreign Minister Radoslaw Sikorski has asked the Ukrainians to stop bluffing and act according to the conditions demanded by the EU.

The parties are lost in the translation of their own intentions. The Ukrainian side states that the EU is very interested in signing the AA/DCFTA agreement, which will give it free access to the Ukrainian market. Proof thereof is the postponement of the decision on signing the agreement until November 18, when the next Foreign Affairs Council will reconvene, and the extension of the Cox-Kwasniewski mission in Ukraine, both perceived in Ukraine as further signs of EU's desire to ultimately sign the agreement. Frequent visits to and meetings with Kyiv officials strengthen their belief that Ukraine is very important to the EU. It is true that a lack of consensus with Ukraine in Vilnius will be a failure of the EU Neighbourhood Policy, but it would have more devastating consequences for Ukraine, both economically and socially. The European Union will survive without Ukraine, but will Ukraine survive the rough year that lies ahead financially without the support of the EU?

Currently the parties are in gridlock. The Cox-Kwasniewski mission has left Kyiv after two rounds of talks and will now present its report to the European Parliament on November 14. Apparently the discussions focused on the procedural steps for Tymoshenko's treatment abroad, and

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her return upon completion of treatment. EU representatives announced that the Ukrainian draft law on medical treatment abroad for convicts could serve as a basis to reach consensus in the Tymoshenko case. The Party of Region still wants to amend the project to ensure her return to the country after treatment in order to serve out her entire sentence. Should the law pass, the government will have to go through all procedures for Tymoshenko's release at the speed of light in order to meet the November 18 deadline. This is not impossible, though, in a country that operates on orders from the president.

The possibility of Yanukovich agreeing to submit the law for parliamentary approval without actually releasing Tymoshenko is under consideration by Europeans. On November 18, he could present the law as a significant progress in the matter and promise Tymoshenko's release on the eve of the Vilnius Summit or immediately after. Europeans are preparing for this scenario, as Yanukovich is known for not fulfilling promises and playing tricks. "Ms. Merkel hasn't met with President Yanukovich in quite some time because he has made promises that he hasn't kept," explains a European official. Should this scenario come through, a provisional signature of the AA, with full activation only upon implementation of the law and Tymoshenko's departure for treatment is under consideration.

The financial aspects of the country are also tightly linked to the Tymoshenko case. Ukraine hopes that the signing of the AA agreement will guarantee a financial intervention by the EU, similar to the one in Greece. Parallel to the Cox-Kwasniewski mission, the EU is holding talks with the IMF regarding a loan for Ukraine in 2014, which would bring macro-economic stability and minimize the impact of possible sanctions imposed by Russia after signing the AA/DCFTA agreement. The negotiated amount is between \$10 to 15 billion. The IMF has just closed a consultation session with Kyiv authorities on resuming financing. Yanukovich's dilemma is that current conditions imposed by the IMF are similar to those from the previous agreement, which was suspended because the government failed to fulfill them. In order to obtain loans from the IMF and the EU, Yanukovich will have to take unpopular measures he has obstinately avoided so far, such as cutting gas subsidies for household consumers and instituting better tax collection. Since Ukrainian small and medium enterprises already carry a heavy fiscal burden, the president will have to focus on the



oligarchs, who prefer to transfer their income to offshore accounts in order to avoid paying taxes. A stricter fiscal and social policy might upset the oligarchs and nurture the discontent of the lower classes, an unfavorable scenario for a 2015 reelection.

Conclusions

Seen from any angle, the options ahead of Yanukovich present many risks for his political future. The opposition, which received good results in the 2012 parliamentary elections, will try to use the Tymoshenko case and possible failure at Vilnius to remove him from power. Similarly, taking unpopular economic measures would be a gift for the opposition in the electoral campaign. Russia will try to tempt Yanukovich with Euro-Asian promises, using Ukraine's financial vulnerability and the president's own fears in order to deepen Ukraine's political and economic dependency on Russia. If Yanukovich signs the AA/DCFTA agreement with the EU later this month, the Kremlin will take measures to augment Ukraine's deficit by setting import restrictions in place. Under the same scenario, the EU will gain more influence over Ukraine. If the agreement is not signed this month, Ukraine will exit the European trajectory until autumn 2014 (when similar agreements with Georgia and Moldova are anticipated) or until 2015-16, and will be more susceptible to blackmail from Moscow.

By trying to balance between East and West and avoiding to address the Tymoshenko case until the 12th hour, Yanukovich has pushed himself in a corner, facing only options that are risky for his political career. Whatever his choice, he will either give the opposition a strong advantage in the upcoming elections, will have to run against a feared rival with a good chance of winning, or will depend, together with his entire country, on an unreliable partner. Yanukovich should stop looking for an attractive solution that would be good for himself, and instead choose the one that would be good for the country. Despite the frustration this process has generated, European diplomats should continue to be patient and try to be at least as creative as their Russian counterparts in giving him the space to do this. They should remind him of the incentives to arrive at the right decision.

About the Author

Stanislav Secieru holds a Ph.D. in political sciences, and has conducted research at the NATO Defense College (Rome), the Institute for European Politics (Berlin), and the New Europe College (Bucharest). He has been involved in research projects at the European Council on Foreign Relations (London), DemosEuropa (Warsaw), the Europeum (Prague), the Heinrich Böll Foundation (Berlin), the Open Society Foundation (Bucharest), and the Finnish Institute for International Affairs (Helsinki). He has field research experience in post-Soviet space (Armenia, Azerbaijan, Georgia, Moldova, Russia, and Ukraine). He recently co-authored *South Caucasus 20 Years After: Political Regimes, Security, and Energy*.

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