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Ukraine-EU: ENP implications and prospects

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Summary

Ukraine and the European Union are holding negotiations on the development of the new enhanced agreement to come in place of the Partnership and Cooperation Agreement as legal basis for further bilateral relations. The new agreement that will be called "Agreement on Association" will define strategic goals and the framework of cooperation between Ukraine and the EU for the future 10 years or more. Both parties recognize that the agreement should be comprehensive, long-term and legally binding.

The approaches of Kyiv and Brussels as to the precise content of sectoral cooperation within the framework of the new agreement and transition from partnership to economic integration and political association generally coincide. However, there are some discrepancies regarding the scope of powers of joint institutions as well as the definition of the final purpose of the next stage of cooperation. The most arguable issues are postponed to the final stage of negotiations and will be settled on the highest political level.

Kyiv emphasizes that the new enhanced agreement should foresee the level of cooperation permitting Ukraine's preparation to begin negotiations as to the EU membership. The Brussels' response, reflected in the negotiations mandate, doesn't contain any relevant prejudgments regarding the framework of Ukraine – EU cooperation on its further stages.

During the first negotiations phase the discussion of cooperation in the sphere of justice, freedom and security was mainly completed. Considerable progress was achieved in defining the issues of economic and sector cooperation, as well as human potential development. Besides, the dialogue on the establishment of free trade area between Ukraine and the EU was initiated.

It was expected that the second phase of the negotiations that started in September 2008 would be more complicated as within its framework it would be necessary to reach consent on the most controversial issues as to the final purpose of the next stage of cooperation, the status of future agreement, configuration of joint institutions and their capacities, as well as to tailor compromise wording for combining Ukraine's European aspirations and the European Neighbourhood Policy framework.

However, at the Ukraine –EU Summit that took place in September in Paris, due to the events in Georgia and the EU subsequent intention to give some encouraging signals to Ukraine, the EU agreed to the substantial concession to Kyiv in terms of the future agreement status and recognition of Ukraine's European identity. Thus, the joint declaration adopted at the Paris Summit states that the new enhanced agreement between Ukraine and the EU will be called *Agreement on Association*. Therefore the system of Ukraine – EU joint institutions will be respectively renewed. Besides, a new instrument for the preparation of the new enhanced agreement implementation will be introduced in 2009 instead of the Ukraine –EU Action Plan. In the mentioned declaration Ukraine is for the first time explicitly recognized by the EU as a European country that shares with the EU its common values. At the same time such a compromise doesn't guarantee that the proposed innovations will qualitatively transform the bilateral relations and won't remain a mere statement. The EU representatives continue to stress that the new

Agreement on Association neither opens, nor closes the door to the European Union.

The attractiveness of the association type of the future agreement for Ukraine is explained by the fact that this type of agreement was concluded with European Union candidate countries during their preparation process for accession. In the same time it's worth of notice that there is no direct legal link between the relations of association and membership prospect.

However, what is much more important than the symbolic importance of the association type of relations is the possibility to introduce into the text of such an agreement real instruments of an enhanced interaction which through their contents and not only formal aspects would be in line with the associated partnership. The efforts of the Ukrainian party should focus on attaining this goal in the negotiation process.

Provisions dealing with security guarantees to Ukraine will constitute a new element of the political part of the agreement. In particular, Ukraine proposed including into the agreement the provisions on mechanisms of political consultations in case of appearance of threats to the territorial integrity, inviolability of frontiers and sovereignty of Ukraine. According to the EU institutional procedures, the issue of holding such consultations is within the competence of the Presidency and EU Council which elaborate a common position on the basis of positions of member states. Previous phases of this issue discussion revealed a rather cautious attitude of the EU to this proposal and at least its reluctance to establish a direct link between applying such a mechanism of consultations and appearance of the above-mentioned threats. Nevertheless, in its recent statement the EU has confirmed the prospect of establishing of a certain form of consultations with Ukraine on security matters at various levels.

In view of a persistent non-acceptance by the EU of the idea of fixing Ukraine's EU membership prospect in the text of the future agreement, the Ukrainian party should not vigorously insist on this claim. Not mentioning such a prospect in the text of the agreement doesn't mean its rejection in the future. It is obvious that in terms of strategy it would be much more advantageous for Ukraine to "reserve" the most ambitious positions in the context of its European integration intentions. At the same time the ambitiousness of the Ukrainian intentions is not often backed by the capacity to accomplish them.

Thereby, while preserving tactically the claim of recognizing membership prospect for Ukraine, the most rational approach would be focusing on the inclusion in the text of the agreement of real instruments contributing to modernization and implementing reforms, as well as mechanisms of an enhanced interaction. These mechanisms should create conditions that are necessary for gradual integration of Ukraine into European space. To attain this goal it is necessary to make a full use of all the possibilities that are offered in the framework of ENP and respective Action plans.

The central element of economic constituent of the agreement will be provisions on the establishment of free trade area between Ukraine and the EU. The precise parameters of such FTA are not defined yet, but there is a shared understanding that it should be deep and comprehensive in order to ensure the maximum positive effect for the economic development of Ukraine.

As a country which is outside the EU and is not an official candidate for the EU membership Ukraine has a rather wide freedom of choice of the depth of economic integration with this organization. Naturally this choice is limited by the state of economic development of Ukraine and political will of the EU as to the degree of openness of its markets for Ukraine.

During its existence the EU has developed various form of trade liberalization with third countries and regional associations. The spectrum of these forms extends from the lowest degrees of integration (simple free trade areas), through higher (customs union) and to the highest forms (full participation in the EU Single Market).

Economic estimates show that the optimal option for Ukraine in terms of gaining the maximum effect for its economy and welfare of its population is the establishment of a deep and comprehensive free trade area with a large-scale regulatory approximation of Ukraine to EU standards. And the most important component of such an FTA will not be the elimination of customs tariffs (symmetric or asymmetric) but the reduction of non tariffs barriers for trade in goods and decreasing regulatory pressure on trade in services.

A deeper form of economic integration will require much more efforts than a simple free trade area. Its implementation will depend on the capacity of Ukrainian authorities and business to find a balance of interests in order to attain this goal. Besides, the requirements Ukraine will have to comply with in order to establish a deep and comprehensive FTA will in fact coincide with the programme of reforms needed for Ukraine. This will constitute a strong impetus for its general development. That is why a deep and comprehensive FTA gives more economic advantages in terms of strategy.

A concrete package of measures to be taken in view of establishing a deep FTA as well as periods of their implementation should be determined on the basis of analysis of internal priorities and resources costs which are necessary for their introduction. Although various combinations of components of a deep FTA are possible, it is not strategically justified in terms of gaining an optimal result to select only those which are less costly. The main criterion of selection of an optimal package should be the right definition of transitional periods duration for introducing necessary reforms.

It is obvious that full liberalization of mutual trade will not escape some exclusions, asymmetric measures and transition periods. As to extending the EU Single Market four freedoms to Ukraine, in particular, free movement of workforce it is obviously a rather long-term perspective due to objective political, economic and administrative factors.

In case of signature of deep and comprehensive free trade agreement, except introduction of zero tariffs for trade and non-tariff barriers, Ukraine should harmonize its competition and regulatory policy with the principles of the EU energy policy. This implies structural reforms on energy markets of Ukraine in order to comply with the respective directives of the European Commission.

For the adaptation of regulatory environment to the EU requirements Ukraine should conduct the series of structural reforms aimed at sector demonopolization,

raising market competitiveness and openness. The conduction of these reforms will raise social welfare first of all due to higher quality of services and more adequate prices as a result of competition. Sector enterprises will raise their efficiency and sector investments will grow.

Another important element of the agreement will be the provisions on energy cooperation. Energy sector belongs to the priority spheres of cooperation between Ukraine and the European Union and possesses significant capacities for the extension thereof. Hence, Ukrainian delegation applies its efforts to extend the framework of strategic cooperation in this sector while negotiating the content of respective provisions in the new enhanced agreement.

Energy cooperation is implemented within the framework of the Partnership and Cooperation Agreement, the Ukraine-EU Action Plan and Memorandum on Mutual Understanding between Ukraine and the EU on Cooperation in Energy Sector. Although the cooperation potential thereof has not been exhausted yet, the medium-term capacity of the new enhanced agreement demands for significant extension of current energy cooperation beyond the European Neighbourhood Policy (ENP) framework.

Energy cooperation has strategic importance for national economic and social development and implies development and modernization of energy sector infrastructure as well as involving investments from international financial organizations and private sector. Therefore, Ukraine applies every effort to join in the EU energy system and access to the Energy Community Treaty as well as to achieve synchronous interconnection of the Ukrainian electricity network with that of the Union for the Coordination of the Transmission of Electricity.

The EU-Ukraine energy cooperation is also aimed at joining efforts in responding to the EU and Ukraine intrinsically linked needs for strengthening energy security and energy supply diversification, reforms of Ukrainian gas sector and energy market, gas transit system modernisation, providing nuclear security, energy efficiency and the use of renewable energy sources. This will be mainly reflected in the full-scale usage of the ENP, in particular, through institutionalization of dialogue mechanisms between the parties on the relevant issues, further market integration and harmonization of legislation in energy sector.

According to Kyiv approach, the "Agreement on Association" should foresee coordination mechanisms on cooperation in the field of energy security and Ukraine's compliance with the EU energy security strategy (outlined in the European Commission Green Paper "A European Strategy for Sustainable, Competitive and Secure Energy" of March 8, 2006), as well as introduction of new instruments of cooperation in order to widen the financial capacities of Ukraine –EU partnership in energy sector.

Therefore it could be concluded that the optimal position of Ukrainian party in negotiations on the new enhanced agreement should be oriented at the wide implementation of all cooperation mechanisms available within the framework of European Neighbourhood policy. The scope and the ambitiousness of the new agreement will be reflected not in its formal wording but in the efficient instruments of practical cooperation that would provide Ukraine's gradual integration into European political, economic and energy spaces.